

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EDMUND BRYAN,

Plaintiff,

-against- No. 07 Civ. 7300 (SHS)

ECF Case  
MEMORIAL SLOAN-KETTERING CANCER  
CENTER,

Defendant.

-----X

April 29, 2008  
10:10 A.M.

Deposition of Defendant, by  
RUPERT GILLETTE, taken by Plaintiff, pursuant  
to Notice, at the offices of The Scott Firm,  
55 Washington Street, Suite 705, Brooklyn, New  
York 11201, before Charisse Romeo, a Shorthand  
Reporter and Notary Public within and for the  
State of New York.

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2     A P P E A R A N C E S:

3             THE SCOTT FIRM  
4                 Attorneys for Plaintiff  
5                 55 Washington Street, Suite 705  
6                 Brooklyn, New York 11201

7             BY: A. BARAKA SCOTT, ESQ.

8

9             McDERMOTT, WILL & EMERY, LLP  
10                 Attorneys for Defendant  
11                 340 Madison Avenue  
12                 New York, New York 10173

13

14             BY: KATHERINE D. KALE, ESQ.

15

16     ALSO PRESENT:

17

18             EDMUND BRYAN

19

20             PAMELA DUDLEY  
               Memorial Sloan-Kettering Center  
               Human Resources Representative

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2           IT IS HEREBY STIPULATED AND AGREED by

3   and between the attorneys for the respective

4   parties herein that the sealing, filing and

5   certification of the within deposition be waived;

6   that such deposition may be signed and sworn to

7   before any officer authorized to administer an

8   oath, with the same force and effect as if signed

9   and sworn to before a judge of this court.

10           IT IS FURTHER STIPULATED AND AGREED

11   that all objections, except as to the form, are

12   reserved to the time of the trial.

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1 R. Gillette

2 R U P E R T G I L L E T T E,

3 having been first duly sworn by the

4 Notary Public (Charisse Romeo), was

5 examined and testified as follows:

6 EXAMINATION BY MR. SCOTT:

7 Q. Please state your name and

8 address for the record.

9 A. Rupert Gillette, business address

10 1275 York Avenue, New York, New York.

11 Q. Good morning, sir.

12 A. Good morning.

13 Q. Okay, my name is Armani Scott. I

14 am the attorney for Edmund Bryan. I represent

15 him in the case captioned Edmund Bryan against

16 Memorial Sloan-Kettering Cancer Center.

17 You are appearing here today

18 pursuant to a notice of deposition, correct?

19 A. Yes.

20 Q. I'm going to ask you some

21 questions and just some general ground rules.  
22 Wait for me to finish the question and then  
23 you can respond. There is a court reporter  
24 here, she is taking down everything that is  
25 said, so your responses have to be audible and

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1 R. Gillette

2 we can't be speaking over each other because

3 she can't take it down.

4 A. Okay.

5 Q. So, uh-huh and um-hum, any shakes

6 of the head, she can't take that down.

7 A. Okay.

8 Q. In the event that I phrase a

9 question in a way that it is inartful, it

10 doesn't make sense, let me know and I'll

11 rephrase it. I don't want you to guess at the

12 meaning of my question.

13 I am not trying to trick you. If

14 you don't know the answer to the question, I

15 don't want you to guess either. Just say you

16 don't know, okay?

17 A. Okay.

18 Q. Very good. Mr. Gillette, by whom

19 are you employed?

20 A. Excuse me?

21 Q. By whom are you employed?

22 A. Memorial Sloan-Kettering

23 Hospital.

24 Q. And for how long have you been

25 employed there?

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1 R. Gillette

2 A. Approximately 34 years.

3 Q. And what is your present job  
4 title?

5 A. I am the night supervisor in the  
6 sterilization department.

7 Q. And how long have you been in  
8 that position?

9 A. Approximately six years.

10 Q. And prior to that supervisory  
11 position?

12 A. I was a lead tech.

13 Q. And how long were you a lead tech  
14 for?

15 A. About five years.

16 Q. And prior to that?

17 A. Technician.

18 Q. And how many years?

19 A. I guess about nine years.

20 Q. And prior to that, title and how

21 long?

22 A. I worked in the distribution area

23 for about 13 years.

24 Q. And what is the distribution

25 area, what did you do there?

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2 A. I supplied the floors with  
3 supplies.

4 Q. And how many years, again, I'm  
5 sorry?

6 A. 13.

7 Q. That just about tallies up your  
8 entire tenure at Memorial Sloan-Kettering?

9 A. I believe so.

10 Q. Very good. That's fair to say,  
11 okay.

12 If you could just briefly run  
13 through your educational background, please?

14 A. High school graduate plus  
15 certification in sterilization.

16 Q. Where did you go to high school?

17 A. James Madison in Brooklyn.

18 Q. And when you say you have  
19 certifications in sterilization, can you be  
20 specific, what certifications do you have,

21 when did you get them?

22 A. I've been certified, I believe,

23 for about 14 years, okay?

24 Q. Okay.

25 A. There is only one sterilization

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1 R. Gillette

2 certification and that's the only one I have.

3 Q. Any other certifications?

4 A. No.

5 Q. With this certification, is there  
6 any requirement that you stay current or  
7 recertified any number of years?

8 A. Um, you need to accumulate 12  
9 points during the course of the year to  
10 maintain your certification.

11 Q. And have you done that over the  
12 course of your 14 years, approximately 14  
13 years of certification?

14 A. Yes.

15 Q. And how do you acquire these 12  
16 points?

17 A. Generally, we have in-service  
18 videotapes, sometimes physical on-hand  
19 in-service inside the department, accumulation  
20 of that, and watching videos during the course

21 of the year, that makes up the 12 points.

22 Q. In your current job title as

23 supervisor, what are your job

24 responsibilities?

25 A. That would be to make sure --

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2 there were several tasks that are done in the  
3 department, the department itself has like  
4 several areas.

5 Decontam area, you have the prep  
6 and pack area, you have the steam, you have  
7 the custom ultrasonic, you have the case room.  
8 There are certain tasks to be done in each of  
9 those areas and it is my responsibility to  
10 make sure they are done each night --

11 Q. Okay.

12 A. -- by the staff that are working  
13 in those areas.

14 Q. And if you could just briefly go  
15 through those, I believe you named five  
16 different areas, or was it six?

17 I'm thinking you said five, five  
18 or six areas you just ran through,  
19 specifically, what happens in each of those?

20 A. The decontam area, we receive

21 carts from the OR with soiled trays, it would

22 be bloody trays with blood, you know.

23 Q. All right.

24 A. We are to wash those trays,

25 process them, process meaning we send them to

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2 a tunnel washer. There are other items that  
3 are in the decontam area that we are to wash,  
4 sometimes we get pumps, patient pumps, IV  
5 pumps, commodes, various other items, but the  
6 decontam area is basically to clean.

7 Q. Okay.

8 A. And to process, meaning send  
9 through the tunnel washes. Then you come to  
10 the prep and pack area where the tray assembly  
11 is done by the staff.

12 Q. Okay.

13 A. Meaning all the trays that come  
14 from the decontam area, they come into the  
15 prep and pack area and we assemble the trays.  
16 Pack them up for sterilization. We put them  
17 in containers and they are packed and ready  
18 for sterilization.

19 Then you go to the sterilization  
20 area where that staff would take all the

21 assembled trays that are in the containers,  
22 place them on a cart and process them in the  
23 steam sterilizer.  
24 Then you go from the steam  
25 sterilization area, once the trays -- all the

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2 items that are sterilized, that are processed,  
3 they are removed, cooled off and then they are  
4 taken to the case room area where they are  
5 stored.

6 Also, in addition to the case  
7 room area, the staff that works in there, they  
8 need to complete the cases that the OR would  
9 be using the following day for operations.

10 They need to complete those carts. By that, I  
11 mean, there are missing items on each case and  
12 we have to get the missing item, put them on a  
13 cart and send the cart up to the OR.

14 Q. All right.

15 A. We also have the custom  
16 ultrasonic area and that area, we receive  
17 flexible scopes also from the decontam area  
18 and we are to process the flexible scopes, and  
19 in the custom ultrasonic machine, prepare them  
20 and have them ready for distribution to the

21 various areas of the hospital.

22 Q. All right. As a supervisor, how

23 many persons work on your team?

24 A. I believe it's ten.

25 Q. Okay. And their job titles would

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2 be what, their varied job titles would be

3 what?

4 A. I have one lead technician and

5 the rest of all the staff would be

6 technicians, their title would be.

7 Q. Do you know what a CPD Tech I is?

8 A. No.

9 Q. No?

10 A. No.

11 Q. CPD Tech II?

12 A. No.

13 Q. Equipment specialist?

14 A. We did have that position at one

15 point. I just spoke to the director a couple

16 of days ago and I believe he thinks it is a

17 position that is going to be eliminated.

18 Q. So, as far as you are aware,

19 other than the distinction between a lead tech

20 and a tech, there is no further distinction

21 between technicians themselves, if you are a

22 tech, you are a tech?

23 A. They are all the same.

24 Q. Okay. As far as job

25 responsibilities, is the hiring of lead tech

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2 or technicians, does that come under your job  
3 description?

4 A. No.

5 Q. Training, the training of either  
6 lead tech or technicians, does that in any way  
7 come under your job description?

8 A. Could you repeat that?

9 Q. The training of either lead tech  
10 or technicians, does that come under your job  
11 description?

12 A. Yes.

13 Q. If you could just describe in  
14 which way?

15 A. Well, in terms of training, it is  
16 not totally locked into me, the supervisor, to  
17 completely train the staff, even though when  
18 we get new staff, I always make sure that I do  
19 have an input.

20 Generally, what I do with the

21 staff is I would take them around the  
22 department, I would show them the final  
23 details of what we are doing. I am very exact  
24 in what I show them, but after I go through  
25 the process with them, I will usually ask

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2 maybe another staff, like lead tech, or  
3 sometimes if he is not available, any of the  
4 senior technicians, technicians that have been  
5 there a while that knows the job very well, I  
6 would ask them to help to train the new  
7 individual.

8 Q. And in circumstances that you,  
9 such as the one you just mentioned, would that  
10 be when a specific issue arose and the new  
11 employee needed to be trained on a particular  
12 issue or would that be in general?

13 A. Can you start over with the  
14 question?

15 Q. That situation you just  
16 described?

17 A. What situation?

18 Q. Where you have a senior  
19 technician, the lead tech is not available, a  
20 senior technician who knows the job well is

21 asked to train --

22 A. Okay.

23 Q. -- a new employee or a new

24 tech --

25 A. Yes.

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2 Q. -- the circumstances under which  
3 that would arise?

4 A. What would bring about a  
5 circumstances?

6 Q. Yes, absolutely.

7 A. Generally, it would be the lead  
8 tech would be busy, I don't know, doing  
9 something, and myself would be busy doing  
10 something, because generally, I move around  
11 the department, I do at one point in the  
12 night, I would sit and sometimes I would make  
13 up the loose instruments myself, but prior to  
14 that, I'm moving around the department.

15 So generally, for a new staff, I  
16 would set them up, I generally always set them  
17 to sit next to the lead technician, but if for  
18 some reason, he is not available, maybe he's  
19 busy doing something else, I would set them up  
20 with another staff.

21 Q. Who's responsible for hiring in

22 your department?

23 A. Human resources.

24 Q. And at present, who is your

25 supervisor?

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2 A. I don't have a supervisor. I do  
3 have a director and his name is Melvin  
4 McClean.

5 Q. How long has Mr. McClean been  
6 your director?

7 A. I guess about a year.

8 Q. And prior to Mr. McClean?

9 A. I believe it was Carol Cass,  
10 C-A-S-S, I'm not sure about that, but she  
11 resigned and she was given another position  
12 and then Melvin McClean was her replacement  
13 and that took place about a year ago.

14 Q. Who is John Meggs?

15 A. John Meggs was the manager, used  
16 to be. He is no longer with us.

17 Q. In the hospital structure,  
18 operational structure, did you report to John  
19 Meggs before he left the hospital?

20 A. Yes.

21 Q. And then, at this present time,  
22 there is no one occupying the position that  
23 Mr. Meggs previously occupied?

24 A. No.

25 Q. Okay. Do you know why that is?

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2 A. Why no one --

3 Q. Why no one is occupying that  
4 position previously held by Mr. Meggs?

5 A. Why no one?

6 Q. Is currently occupying that  
7 position?

8 A. Well, they are in the process of  
9 hiring someone.

10 Q. Do you know why Mr. Meggs is no  
11 longer with Memorial Sloan-Kettering?

12 A. No.

13 Q. Did you have any conversations  
14 with Mr. Meggs about why he was leaving  
15 Memorial Sloan-Kettering?

16 A. No.

17 Q. How long did you work with John  
18 Meggs?

19 A. About six years.

20 Q. So that's been essentially most

21 of the time that you were the nighttime

22 supervisor?

23 A. Yes.

24 Q. And during this period of time,

25 was Mr. Meggs always your manager?

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2 A. Yes.

3 Q. During this time, would you have  
4 conversations with Mr. Meggs about business?

5 A. You're asking if I could?

6 Q. Would you, did you, did you have  
7 conversations with him?

8 A. About the job?

9 Q. Yes.

10 A. Yes.

11 Q. Every day?

12 A. No.

13 Q. How frequently on a weekly basis  
14 would you speak with John Meggs?

15 A. He generally came in early in the  
16 morning, sometimes twice a week. He generally  
17 was there every Friday and sometimes he would  
18 come in on a Thursday, so I would see him  
19 Thursday and Friday.

20 Aside from that, I wouldn't have

21 any contact with him aside from e-mails that  
22 he would send out and I would respond to, but  
23 generally, I only saw him twice a week at the  
24 most.

25 Q. So you would speak to him twice a

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2 week?

3 A. Yes, in person.

4 Q. And as far as this e-mail

5 communication, how frequently would that

6 occur?

7 A. That would be every night.

8 Q. Okay. And the nature of your

9 communication via e-mail, what were they

10 about?

11 A. The job, if there was a problem,

12 any problems in the department, he would send

13 an e-mail letting me know what the problem

14 was, anything that he -- anything that had

15 come up in the department, changes that were

16 made maybe to trays, if we had received loaner

17 trays, anything that pertained to the

18 department that needed to get done.

19 Q. Over the six-year period you

20 worked with John Meggs, did you develop any

21 sort of a social relationship with him?

22 A. No.

23 Q. You never saw John Meggs outside

24 of work?

25 A. No.

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2 Q. Never went to a bar with him?

3 A. No.

4 MS. KALE: Objection.

5 You can answer.

6 Q. Never went to a barbecue or any

7 sort of social functions --

8 MS. KALE: Objection.

9 Q. -- that he also attended?

10 A. No.

11 Q. Have you developed a social

12 relationship with any other of the people

13 under your supervision in the past six years?

14 A. No.

15 Q. You don't have a social

16 relationship with any of the people whom you

17 supervise at Memorial Sloan-Kettering?

18 A. No.

19 Q. You have never gone to a bar with

20 people under your supervision?

21 MS. KALE: Objection.

22 A. I have.

23 Q. You have?

24 A. Yes.

25 Q. And how frequently has this

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2 occurred?

3 A. Not frequent. We, in the past, I  
4 used to, with some of the other staff that are  
5 no longer there, I used to go out with some of  
6 the staff, this is years ago.

7 Q. Okay.

8 A. Those staff are no longer there.  
9 Generally, now, one of the lead techs,  
10 sometimes he and I would go out to get pizza  
11 on Fridays. Sometimes we would go by the bar,  
12 which of course we don't drink, just go and  
13 hang out for a little while and go and get  
14 some pizza, but it's not that often.

15 Q. And this lead tech you are  
16 referring to, who is that?

17 A. Miguel Ruiz.

18 Q. And on these occasions where you  
19 would go and get pizza with Mr. Ruiz, what  
20 kind of discussions would you have?

21           A.   Maybe we look up across the  
22   street at the new condo they are putting up,  
23   talk about it, across from the pizza shop.  
24   Can't really remember.  
25           Maybe sometimes I would ask him

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2 like, well, what are you doing this weekend,  
3 you ask me the same, you would probably talk  
4 about where we're going to take our families,  
5 you know, if we are going to go to the movies,  
6 um, go out to eat. Just general  
7 conversations. Can't remember anything beyond  
8 that specifically. Generally, the same.

9 Q. Is there a reason why you no  
10 longer, as you say --

11 MR. SCOTT: Strike that.

12 Q. Why have you stopped going out  
13 with your co-workers other than Mr. Ruiz?

14 A. They are no longer there. They  
15 are no longer in the department. They've all  
16 left.

17 Q. So the new group of co-workers,  
18 have you made a conscious decision not to  
19 develop personal relationships with them?

20 A. No.

21 Q. If you can, could you just please

22 list the names of the individuals who are

23 your -- currently under your supervision?

24 A. I have Padmor Tufo, William

25 Ogree, John Boafo, Isaac Donku, Aymar Soh

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2 Fatso, Efrain Perez, Edwin Adon, Edmund Bryan

3 and Miguel Ruiz and Shawn Truesdale. I

4 believe that's it.

5 Q. And how long have you known

6 Edmund Bryan?

7 A. I guess about 15 years.

8 Q. In what capacity did you come to

9 know Edmund Bryan?

10 A. From -- he used to work the

11 evening shift and I knew him then and then he

12 came on the night shift.

13 Q. When you first met Mr. Bryan,

14 what was your job title?

15 A. I believe I was the lead tech at

16 the time.

17 Q. And were you the lead tech on the

18 evening shift at that time?

19 A. No, but the shift, like I used to

20 overlap with the evening shift and I used to

21       come in at -- my hours were from 10:00 to

22       6:00.

23           Q.   Yes.

24           A.   And the evening shift, their

25       hours were from 3:00 to 11:00. So I had like

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1 R. Gillette

2 an hour where I was on the evening shift  
3 before the night shift had started.

4 Q. Do you currently have a social  
5 relationship with Mr. Edmund Bryan?

6 A. No.

7 Q. Is it strictly professional?

8 A. Yes.

9 Q. And what is Mr. Bryan's job title  
10 currently, if you know?

11 A. Technician.

12 Q. Have you ever referred other  
13 employees to Mr. Bryan for training?

14 A. Yes.

15 Q. If you can recall, who have you  
16 had occasion to send to Mr. Bryan for  
17 training?

18 A. I don't really remember.

19 Q. Have you done it more than once?

20 A. Yes.

21 Q. Several times?

22 A. Yes.

23 Q. Many times?

24 A. Many, many would be okay.

25 Q. As part of your job description,

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2 do you also -- is it also one of your  
3 responsibilities to complete evaluations of  
4 the persons under your supervision?

5 A. Yes.

6 Q. And how frequently do you conduct  
7 these evaluations?

8 A. Once a year.

9 Q. Do you ever have occasion to do  
10 quarterly evaluations?

11 A. Yes.

12 Q. When would those occasions arise?

13 A. Every three months.

14 Q. What would give rise to  
15 conducting quarterly evaluations as opposed to  
16 yearly?

17 A. There is no rise. It is standard  
18 procedure that you do a quarterly evaluation  
19 to let the employee staff know where they are  
20 presently in the department.

21           And the reason for that is when  
22   the final evaluation is done, it is not a  
23   surprise to them what the outcome of their  
24   evaluation would be. Meaning, during the  
25   course of the year if every three months you

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2 let them know where they are, at the end of  
3 the year, there's no surprise. You know, they  
4 knew where they were at each quarter.

5 Q. Okay.

6 A. So it is not -- it is nothing  
7 that brings it about, it is a standard  
8 procedure that you do.

9 Q. Okay. Do you conduct quarterly  
10 evaluations for all of the persons under your  
11 supervision?

12 A. Yes.

13 Q. And how long have you been  
14 conducting these quarterly evaluations?

15 A. I would say a couple of years.

16 Q. And are these evaluations in  
17 writing?

18 A. Yes.

19 Q. And just so we're clear, when you  
20 say a couple of years, are you saying at least

21 two years you've been doing that?

22 A. Yes.

23 Q. And these quarterly evaluations,

24 did they arrive out of your own initiative or

25 was it a mandate that came down from someone

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1 R. Gillette

2 you answered to and then you started these  
3 quarterly evaluations?

4 A. From the manager.

5 Q. And that would be John Meggs?

6 A. John Meggs, yes.

7 Q. Did you receive that mandate in  
8 writing or was it a verbal communication?

9 A. Verbal.

10 Q. Was there a particular form,  
11 format, that the quarterly evaluations were  
12 supposed to take?

13 A. Yes

14 Q. And what was that, what was the  
15 format?

16 A. The manager, as he told us, at  
17 least I need to do this, he gave me a form  
18 that outlined each area of the person's areas,  
19 depicted areas, that should be evaluated for  
20 each staff.

21 Q. Okay.

22 A. But it was a form that he gave me

23 and I just followed the guidelines of each

24 specific thing to evaluate about the staff.

25 Q. And as far as the annual

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2 evaluations, how long have you been doing  
3 those?

4 A. Since I've been a supervisor.

5 Q. Is part of your responsibilities  
6 as a supervisor, is it also your job to  
7 correct mistakes or improper action by one of  
8 the people under your supervision?

9 MS. KALE: Objection.

10 A. Can you give me a definition of  
11 correct?

12 Q. If one of your -- if one of the  
13 individuals under your supervision puts a tray  
14 together improperly, it would be your job to  
15 inform them, one, that they put that together  
16 improperly, and two, the proper way to put the  
17 tray together?

18 MS. KALE: Objection.

19 A. That would be correct.

20 Q. Is there a mechanism --

21 MR. SCOTT: Strike.

22 Q. Are you familiar with the  
23 Memorial Sloan-Kettering Cancer Center  
24 employee handbook?

25 A. Yes.

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1 R. Gillette

2 Q. And what is the Memorial employee  
3 handbook?

4 A. What is it?

5 Q. Yes, what is it?

6 A. It is a handbook outlining  
7 policies and procedures of the institution.

8 Q. And do some of these policies  
9 relate to the hospital's position on  
10 discrimination in the workplace?

11 A. I believe so.

12 Q. Have you ever read the Memorial  
13 Sloan-Kettering employee handbook?

14 A. Not in detail, no.

15 Q. Have you ever been provided with  
16 the employee handbook?

17 A. Yes.

18 Q. As one of your job  
19 responsibilities as a supervisor, is it your  
20 job to make sure that the people under your

21 supervision are abiding by the policies and

22 procedures in the employee handbook?

23 MS. KALE: Objection.

24 A. Yes.

25 Q. Do you know what the -- what

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2 Memorial Sloan-Kettering Cancer Center's  
3 policy is on harassment and discrimination in  
4 the workplace?

5 A. Yes.

6 Q. And what is it, what is the  
7 hospital's position?

8 A. I don't remember in detail.  
9 There's a -- the hospital has -- I forgot what  
10 it is called, but everyone has to go on-line  
11 and you actually watch a video and it gives  
12 you the details of discrimination in specific,  
13 you know, like what not to do, what is not  
14 allowed. As far as discrimination goes, I  
15 think I fully understand it, to discriminate  
16 against an individual.

17 Presently, we have on the night  
18 shift, we -- I know for a fact that within the  
19 guidelines, at least in my presence, that we  
20 do follow that policy in terms of

21 discrimination, discriminating against any

22 individual. That, I do know.

23 Q. Okay.

24 A. I can't remember to quote you in

25 detail like what this or that is, but if a

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2 question should arise, you know, if this is  
3 discrimination, or that isn't, I'm clear on  
4 what it is.

5 Q. And if you could describe in your  
6 own words then what constitutes discrimination  
7 in the workplace?

8 A. I guess, presently, the way we  
9 work on the night shift is we don't talk about  
10 sex, we don't talk about politics, religion.  
11 We don't get into national origin of where  
12 someone may be from.

13 We don't curse. There are  
14 several words we are not permitted to use,  
15 which I believe could lead to some form of  
16 discrimination, and that would mean we don't  
17 use the N word, the S word, the F word. We  
18 don't use the word "sex," we don't use the  
19 word "homosexual." We don't use the word  
20 "gay," and as far as origin of where someone

21 is from, we don't speak upon it. It is not

22 used.

23 So for any form of discrimination

24 to be applied, any of those words would be

25 necessary to apply to discrimination, so we

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2 are barred from using those words, so the  
3 night shift is basically it is a shift where  
4 there are no specific perimeters that the  
5 staff get into to expose themselves to any  
6 form of discrimination by the examples I just  
7 gave you. We are not permitted to use those  
8 words.

9 In addition to that, we are only  
10 allowed to listen to one radio station.  
11 Generally, it was Light FM. We've switched  
12 that to Fresh 102.7, which is maybe a little  
13 upgrade from Light FM where the music is a  
14 little more later date and that is the only  
15 station we are permitted to listen to.

16 We are not permitted to listen to  
17 Z100 or 107 or any of the other stations that  
18 would play rap music. That is the only  
19 station we are permitted to listen to.

20 Within that guideline of a radio

21 station, the words we are permitted to use as  
22 far as discrimination goes, it limits us to  
23 being able to discriminate from any  
24 individual, from one to the next.

25 Q. As a supervisor, have you ever

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2 had occasion to witness, hear individuals

3 under your supervision engage in acts of

4 discrimination?

5 MS. KALE: Objection.

6 A. No.

7 Q. During your time as a supervisor,

8 have you ever heard an individual under your

9 supervision use the N word?

10 A. In the past, yes.

11 Q. In your opinion, would the use of

12 that word in the workplace be an act of

13 discrimination?

14 MS. KALE: Objection.

15 A. My personal opinion?

16 Q. Yes, sir.

17 A. No.

18 Q. And why is that, sir?

19 A. It is just my opinion, knowing

20 the fact that how the N word is used by the

21 individuals that uses the word, it is social  
22 and known what it is meant and it is not  
23 derogatory if a black man should call another  
24 black man nigger, everyone socially knows that  
25 is not meant to be derogatory. So opinion

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2 from myself would be in line with that.

3 However, the institution does not

4 permit it. So if you were asking me

5 personally, it would be in the same line of

6 how all the individuals socially speaking, how

7 they use the word is how I would also see it.

8 Q. Okay, so on the occasions when in

9 the past when you've heard that word used in

10 the workplace --

11 A. In the past.

12 Q. -- you did not view it as an act

13 of discrimination?

14 A. No.

15 Q. And as such, you did nothing to

16 correct the behavior of the person under your

17 supervision to use that word?

18 MS. KALE: Objection. There is

19 no testimony that he did or did not do

20 anything.

21 MR. SCOTT: I'm asking --

22 MS. KALE: But you just testified

23 for him.

24 MR. SCOTT: Now, we are on

25 speaking objections.

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2 MS. KALE: Well, it is not  
3 appropriate. It needs to be --

4 MR. SCOTT: It is not appropriate  
5 to have speaking objections. If you  
6 want to make an objection --

7 MS. KALE: Well, I am making my  
8 objection. And I will object more  
9 frequently if need be.

10 MR. SCOTT: You can object to  
11 every question, but you cannot coach  
12 your witness.

13 MS. KALE: And I am not.

14 MR. SCOTT: That's why there are  
15 no speaking objections.

16 Q. Did you understand the question,  
17 sir?

18 A. Yes.

19 Q. Can you answer it?

20 A. No.

21 Q. No, you can't answer it?

22 A. No, in the past, and this was, I

23 think, prior to his lawsuit.

24 Q. When you say "his," who are you

25 referring to?

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2 A. Edmund Bryan.

3 Q. Okay.

4 A. This goes way back, not only

5 languages like that acceptable on the night

6 shift as we did speak in the past, all of the

7 other words that I explained that we are no

8 longer permitted to use, were permitted at the

9 time.

10 And generally, all the males that

11 worked on that shift, there was a general

12 consensus to everyone it was that no one

13 objected in how we all spoke. That was in the

14 past.

15 Then the institution brought it

16 to my attention, managers, that speaking in

17 that manner will no longer be tolerated.

18 Q. Okay.

19 A. Since that time, it has changed.

20 And where the N word in the past would have

21      been spoken and I would not object or ask

22      anyone not to speak it, is no longer the

23      process now.

24              So at one point, to answer your

25      question, when the N word was used, I would

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2 not object or I would not say anything to the  
3 individual for them not to use it.

4 However, that is no longer the  
5 case now, it is no longer appropriate in the  
6 workplace. That's been for some time now.

7 Q. When you say it is for some time,  
8 can you tell me how long has that been the  
9 case?

10 A. It's over five years, I would  
11 imagine.

12 Q. And by what means did management  
13 inform you that that type of language was no  
14 longer appropriate in the workplace?

15 A. I sat in a meeting with the  
16 manager and the director and I believe at the  
17 time it was general management, we had a  
18 meeting and they explained on the institutions  
19 we have, how we were to conduct ourselves in  
20 the department.

21 Q. If you could remember the  
22 individuals who took part in this meeting at  
23 the time with you?

24 A. I believe at that time, it was  
25 Melvin McClean, I think it was Jim Appollo, I

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2 don't think John Meggs was there at the time,

3 I don't remember -- I think there were two

4 other individuals, but I don't remember their

5 names.

6 Q. Anyone from human resources that

7 you can recall?

8 A. No.

9 Q. And not to hold you to a specific

10 date, but you're estimating that this meeting

11 took place about five years ago from what you

12 can recall?

13 A. Yes.

14 Q. And were you provided with

15 anything in writing that memorialized what was

16 communicated to you in that meeting?

17 A. No.

18 Q. So then, since that meeting,

19 if --

20 MR. SCOTT: Strike.

21           Q.   Since that meeting, have you had  
22   occasion to hear persons under your  
23   supervision use the N word while in the  
24   workplace?

25           MS. KALE:  Objection.

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2 A. Yes.

3 Q. And what have you done?

4 A. Simply told them we are not

5 allowed to use the N word. They have also --

6 staff has also cursed, you know, I corrected

7 them. I says it is not permitted.

8 It is over that period of time

9 people have slipped up, slipped up meaning,

10 you know, I've explained the policy, but they

11 forgot and they would say like a curse word or

12 something, I would correct them. I would

13 remind them, so to speak, that, you know, we

14 cannot speak like that in the department. And

15 they would of course acknowledge it, I made a

16 mistake.

17 Q. Specifically with regards to use

18 of the N word, if you can recall, who has

19 slipped up since this meeting that you had?

20 A. I don't remember. It's so long

21      ago.

22           Q.   How frequently have you had  
23      occasions where individuals have slipped up  
24      and used the N word in your presence since  
25      this meeting that you referred to five years

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2 ago?

3 A. Not frequent. In the beginning,  
4 it was more frequent than it is now.

5 Q. When you say in the beginning?

6 A. That was like close to five years  
7 ago.

8 Q. In the beginning, subsequent to  
9 that meeting five years ago?

10 A. Yes.

11 Q. And if you can recall, when is  
12 the last time you heard that word, the N word,  
13 used in the workplace?

14 A. Oh, I couldn't even recall.

15 Q. In the last six months?

16 A. No, no, absolutely not.

17 Q. Within the last year?

18 A. No.

19 Q. Okay. I just want to take a step  
20 back.

21           You were referring to language  
22   that the men in the department used before  
23   this meeting five years ago, do you recall  
24   that, that part of your testimony?  
25       A.   Yes.

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2 Q. And just so we can be clear on  
3 what other kind of language was being used,  
4 was the word "faggot" being used back then?

5 A. Yes.

6 Q. And you heard this word used in  
7 the workplace?

8 A. Back then, yes.

9 Q. Did you ever use it yourself?

10 A. Yes.

11 Q. And did you yourself use the word  
12 "nigger"?

13 A. Excuse me?

14 Q. Did you yourself ever use the  
15 word "nigger" in the workplace?

16 A. Yes.

17 Q. Did you ever use profanity,  
18 curse, back then?

19 A. Yes.

20 Q. What about discussions related to

21 people's national origin, did those kind of

22 conversations ever take place?

23 MS. KALE: Objection.

24 A. No, not really, no. I don't

25 remember those, no.

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2 Q. There were never any jokes about  
3 people's national origin, places of origin?

4 A. No. No. We spoke about a lot of  
5 things. I mean, we cursed, but I do not  
6 remember anyone getting -- because the reason  
7 for that being, the staff at the time, and it  
8 still is, it is quite diverse, and from what I  
9 remember, no one would say anything about  
10 anyone's national origin and I believe  
11 specifically because what was one individual  
12 going to say when a lot of the staff were from  
13 different places.

14 From what I remember, we got in a  
15 lot of different discussions, but national  
16 origin was never one, and this, I'm talking  
17 about way back, I'm not talking about now, I'm  
18 talking about back in the days when we cursed  
19 and we used the N word and national origin was  
20 never a discussion.

21 Q. And this was five years ago,

22 approximately?

23 A. Approximately.

24 Q. And at the time of this meeting,

25 were you a supervisor for the night shift?

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2 A. No.

3 Q. What was your job title then?

4 A. Lead.

5 Q. You were the lead technician at

6 the time of this meeting?

7 A. At the times we spoke and we

8 cursed and as I described going way back many

9 years, I was just a lead technician at the

10 time. We did not have a supervisor on the

11 night shift and it was John Meggs who had

12 promoted me to supervisor. At the time, I was

13 just the lead technician.

14 Q. So at no point in time during

15 your tenure as a supervisor, did you hear --

16 MR. SCOTT: Well, strike that.

17 Q. Did you use the word "nigger" in

18 the workplace?

19 A. No.

20 Q. Or the word "faggot"?

21 A. No.

22 Q. Who is Sheila Donoghue?

23 A. She's one of the representatives

24 from human resources.

25 Q. Do you recall an investigation

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2 that she conducted last year around March of  
3 2007 into some complaints made by Edmund  
4 Bryan?

5 MS. KALE: Objection.

6 A. I don't know, I do know of one  
7 time she did an investigation, I don't know if  
8 it had anything to do with Edmund Bryan.

9 Q. Do you recall whether or not this  
10 investigation occurred around March of 2007?

11 A. Could be, I'm not sure.

12 Q. Okay. You are not sure of the  
13 precise month or the year?

14 A. Either.

15 Q. This investigation that you are  
16 aware of, did Ms. Donoghue interview you --

17 A. No.

18 Q. -- as part of the investigation?

19 A. No.

20 Q. Have you ever been interviewed by

21 Ms. Donoghue regarding complaints of  
22 discrimination made by Edmund Bryan?

23 A. At some -- yes.

24 Q. Do you recall when that occurred?

25 A. No.

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2 Q. Is it possible that it occurred  
3 last year?

4 MS. KALE: Objection.

5 A. I have no idea. I believe it  
6 occurred before -- it is my understanding that  
7 Edmund Bryan had filed a lawsuit and sometime  
8 before we had gone to court, she had an  
9 interview with me.

10 The investigation in question  
11 that you asked about before was at some other  
12 time she had come into the department and  
13 interviewed staff, but not me.

14 Q. Okay.

15 A. But to answer your question,  
16 there was one time prior to us going to court  
17 for Edmund Bryan's lawsuit, she did have an  
18 interview with me and it did pertain to Edmund  
19 Bryan, yes.

20 Q. Okay.

21           A.   When that took place, what year,  
22   what month, I do not recall.

23           Q.   Do you recall that interview she  
24   had with you?

25           A.   Yes.

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2 Q. Can you tell me what it was

3 about, what did she ask you?

4 A. She had stated that Edmund Bryan

5 had made claims of, in details,

6 discrimination. He perceives, for some

7 reason, is saying that he was perceived as

8 gay, homosexual, and without being specific,

9 she wanted to know if I had said that, if I

10 had made those claims and said that to him or

11 about him. And she also wanted to know some

12 of the details as to what we spoke about in

13 the department.

14 Q. Okay.

15 A. So she was investigating, I

16 believe, he made specific claims, and I don't

17 remember all of them, but to each of his

18 claims, she was asking me, you know, what, um,

19 what my thought was in reaction to his claims,

20 were they true, were they false, and for me to

21 give her in detail what my response would be

22 to all his specific claims.

23 Q. Okay.

24 A. Which I did.

25 Q. So with regards to the one you

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2 did mention, the issue of Mr. Bryan being  
3 perceived as gay or being called gay on the  
4 job, what was your response?

5 A. My response was I never --

6 MS. KALE: Objection.

7 A. My response was I never said that  
8 to him, about him, and it was, to my  
9 knowledge, as I explained to her, if in terms  
10 of perception goes, it would be -- if he  
11 thought in his mind, but as far as I know, the  
12 rest of the staff and most of the people that  
13 worked on the job, no one spent any time  
14 concerning in thought or in action towards  
15 Edmund Bryan with reaction to him being gay.

16 What I do know is in the  
17 beginning, when, going way back, when Edmund  
18 Bryan used to ride in my truck with me, I used  
19 to drop him off on 42nd Street, at some point,  
20 he and I separated because of specific

21 reasons.

22 Q. Yes.

23 A. What I do know is the morning

24 when he came to ride with me, I told him you

25 are not riding with me anymore.

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2 The same night, when he came  
3 in -- now, I explained to you, in the past, we  
4 would have open discussions with the staff,  
5 everyone spoke, that means everyone in the  
6 department.

7 The same night, I remember  
8 specifically when he came in, he had stopped  
9 speaking to everyone in the room, to the point  
10 where some of the staff came up to me and they  
11 were like, what's wrong with Ed? I was like,  
12 my response was I don't know.

13 The same week of -- once that had  
14 happened, other employee staff scattered  
15 around the hospital, started to come up to me  
16 and they all asked me what's wrong with Ed?

17 What I had noticed and other  
18 people had told me is from that night going to  
19 now people he had associated with, I believe  
20 to be friends or people around the institution

21 that he used to talk to, from that night on,  
22 he had stopped talking to everyone. And  
23 people kept -- it continued over the years  
24 where people would come over to me and say,  
25 well, what's wrong with Ed?

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2 So as far as perception of him  
3 being gay goes, I don't know where he -- where  
4 this supposedly belief came from because  
5 people were -- everyone used to speak to him  
6 like we all did, from -- it is my  
7 understanding he was the one that came in that  
8 night after he and I had stopped speaking and  
9 he had stopped speaking to everyone in the  
10 institution, starting from in the department  
11 and other people he had known throughout the  
12 institution. For he to be perceived as gay, I  
13 don't understand. It is my knowledge I never  
14 said it, I know that.

15 Q. Okay.

16 A. Spoken to anyone because no one,  
17 I mean, as far as I know, the only reaction  
18 people had towards him was like the word would  
19 be what's up with Ed, meaning when they said  
20 that, I believe they were wondering like why

21 did he stop speaking to them.

22 As far as a gay perception goes,

23 I don't know where that came from. I never

24 said it, I never told anyone, and that's as

25 far as it goes, as far as I know.

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2 Q. Why did the two of you stop  
3 speaking?

4 A. Well, over the years, I've  
5 observed Edmund to be someone who is, I would  
6 say, very controlling. Sometimes in the  
7 discussion that I mentioned that we had in the  
8 department, sometimes other staff would say  
9 like to him, Edmund Bryan, like why don't you  
10 let me speak.

11 He had a way about him that when  
12 he started to speak, he would overpower the  
13 person and not, you know, not have a  
14 conversation where I speak, you speak, he  
15 would be the only one speaking, which to some  
16 degree, it was like it is no big deal. People  
17 have different ways of being in the world. It  
18 never bothered me. But that was a little  
19 something that I had kept in mind.

20 And then the night -- it happened

21 two nights where one night at the time, I was  
22 in charge of the night shift and I delegated  
23 where each staff would be, what their work  
24 would be.  
25 I remember one night, I was

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2 running the steam and he was over in the  
3 sterile area and I think some of the staff  
4 started to kid him about it, you know, you are  
5 so quiet? And then he pointed over to me and  
6 he point-blank told me, I was in charge, he  
7 said you should be doing this, meaning I  
8 should be working on the steris machine and he  
9 should be doing steam. At the time, I  
10 responded like, you know, I was like, yeah,  
11 okay, I didn't really say anything.

12 Q. Okay.

13 A. The following night, we were  
14 working in the same position and he said the  
15 same thing to me. He says I should be working  
16 in the steris and he should be working the  
17 steam.

18 Well, at that point, my feeling  
19 was this is not the job, he is being very  
20 personal here and I took it personally.

21 Other little quirks, I used to  
22 drop him off at 42nd Street and we were  
23 driving down, it is just a ten-minute drive,  
24 we go down Second Avenue, turn down 42nd  
25 Street, and he appeared to me to be a very

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2 angry person, look at that white bitch, look  
3 at that -- and, you know, things like that  
4 made me very uncomfortable, like why he said  
5 them. He had, in my perception, he had a  
6 great hostility against white people.

7 It was his opinion, you know, but  
8 when I combine a few factors, I combined  
9 listening to him in my truck, combining the  
10 fact that he spoke over people and tell me  
11 what my job should be, and when I combined  
12 those things, by that time, I had it.

13 That morning, he came around, he  
14 was planning to ride with me, and I said  
15 that's it, we are not doing this anymore.  
16 Last time I spoke to him.

17 Q. Well, you spoke to him in a  
18 professional capacity?

19 A. Oh, yes.

20 Q. Do you recall having a

21 conversation with Sheila Donoghue on or about  
22 March of 2007 when you discussed with her a  
23 situation between Efraim Terez and someone  
24 named Lennox joking about a Jamaican accent?  
25 A. You mean Efrain Perez?

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2 Q. Yes.

3 MS. KALE: Objection.

4 You haven't started answering it  
5 yet, so go ahead.

6 Q. Yes, thank you, Efrain Perez, and  
7 Lennox.

8 A. With Sheila Donoghue, I don't  
9 remember having any conversation with Sheila  
10 Donoghue.

11 I remember having a conversation  
12 with John Meggs and it wasn't -- actually, an  
13 e-mail about the situation that I knew nothing  
14 about, but John Meggs, the manager at the  
15 time, brought it to my attention and gave me  
16 specific instructions as to how to handle what  
17 had transpired.

18 Q. And what had transpired?

19 A. As far as I know, that I was told  
20 --

21 Q. Yes.

22 A. Efrain Perez had a hobby, if you

23 will, maybe call it a hobby, but he had this

24 process where he likes to impersonate people,

25 like he did an English accent, Australian

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2 accent, a French accent. I perceived that as  
3 impersonation.

4 And as far as that transpired,  
5 Lennox, he works in building service and he  
6 only covers the CPD department in terms of  
7 cleaning up, it is my understanding that  
8 Efrain Perez, it was like a general thing  
9 between he and Lennox, that when he came in  
10 and everyone would meet in the alcove before  
11 the department, Efrain Perez would greet  
12 Lennox by saying hello and he would speak with  
13 a Jamaican accent.

14 Q. Yes.

15 A. It is my understanding that  
16 Edmund Bryan overheard Efrain Perez doing  
17 this, and I don't remember the exact words,  
18 but told Efrain Perez something about his  
19 culture and not to do that.

20 And so then, the manager had

21 conveyed to me that this had transpired,  
22 because I wasn't there at the time when it  
23 happened, and that's what I know to be  
24 happened, just by the manager telling me.

25 Q. You are saying you didn't learn

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2 of this incident from Mr. Perez?

3 A. No.

4 Q. You learned about this from John

5 Meggs?

6 A. Yes.

7 Q. And what was your response upon

8 initially learning about this incident?

9 A. I inquired, I asked John Meggs at

10 the time in the department, I guess it

11 evolved, so to speak, with different rules, at

12 the time, I know cursing isn't allowed, the

13 various things I described to you before, at

14 the time, I had no idea that if someone spoke

15 in a particular accent, aside from, let's say,

16 their culture, so to speak, like if you are

17 Spanish, if you are Spanish and you speak with

18 a Jamaican accent, I, at the time, didn't

19 think that that was any form of discrimination

20 because it is my understanding that he was

21 greeting Lennox and the person Lennox works in  
22 building service and cleaned the department,  
23 he is from Jamaica, I guess he would be  
24 Jamaican, and Efrain and I, my understanding,  
25 they had a comfortable relationship.

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2 Q. Okay.

3 A. In addition to that, if Efrain

4 had spoken in the department with an

5 Australian accent, I didn't perceive that that

6 he was discriminating against Australians.

7 When he spoke with an English accent, I didn't

8 perceive that he was discriminating against

9 English.

10 There were some other accents

11 that he would impersonate. When he did that,

12 my perception of him when he did that was he

13 was showing I could do it. Sometimes people

14 impersonate people or different things and it

15 is kind of like a challenge, you do it, it

16 allows the person to feel a little flexible in

17 their accomplishments. That's how I perceived

18 it.

19 Q. Okay.

20 A. So I sent back an e-mail to John

21 explaining, you know, asking him, like I had  
22 no idea that a person owned an accent and  
23 would be perceived as a form of  
24 discrimination.

25 Well, his response was, I think

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2 he indicated like, yes, and in the e-mail, I  
3 am not getting the point. It led me to the  
4 conclusion that from his standpoint, it was,  
5 and I, as the supervisor, I needed to stop it.

6 The same night, I read the e-mail  
7 in response to the one I sent where he had  
8 wrote in the e-mail like I don't get it, but I  
9 completed reading what he wanted done and I  
10 had a staff meeting.

11 Q. Okay.

12 A. In the staff meeting, I explained  
13 to everyone, whatever your culture is, that  
14 that person is only allowed to speak within  
15 the confines of your culture, which means if  
16 you are Spanish or Puerto Rican, you can't  
17 speak in Jamaican. If you are Jamaican, you  
18 can't speak Spanish. Just that everyone had  
19 to stay within the confines of their national  
20 origin or culture, so to speak.

21           The staff thought it was kind of  
22   strange, but anyway, that was the staff  
23   meeting that I had and I explained to everyone  
24   that this is what needs to be done and this  
25   was in response to what John had explained to

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2 me, had transpired between Efrain and Lennox  
3 and what he wanted done.

4 Q. Do you understand now why that  
5 could be viewed as discrimination in the  
6 workplace?

7 MS. KALE: Objection.

8 If you understand the question,  
9 you can answer.

10 A. My personal opinion?

11 Q. Yes.

12 A. I believe it depends on how the  
13 person choose to deliver it. In the situation  
14 between Efrain and Lennox, I believe the way  
15 it was done was not discriminatory. I know  
16 people can take the same words or approach and  
17 mean -- and put a different meaning behind it.

18 So to answer your question, it is  
19 not a point-blank answer, it is relative to  
20 how it is being used and the person's

21 intentions behind it.

22 Q. Okay. So your same opinion holds  
23 with regards to the use of nigger, it depends  
24 on how the person using the word intends it to  
25 be used?

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2 MS. KALE: Objection.

3 A. As I explained before, as I  
4 explained that to you before.

5 Q. So your answer would be yes?

6 MS. KALE: Objection.

7 A. Yes.

8 MS. KALE: The witness has to be  
9 allowed to testify on his own.

10 Q. Do you recall around March of  
11 2007, acknowledging to Sheila Donoghue that  
12 the word "nigger" is used in the department  
13 when guys are fooling around?

14 A. I don't recall. I may have.

15 Q. So back around March of 2007,  
16 people under your supervision were using the  
17 word "nigger" when joking around?

18 A. No.

19 MS. KALE: Objection.

20 A. No.

21 Q. Were they using it in February of

22 2007?

23 MS. KALE: Objection.

24 A. No.

25 Q. How long has it been since the

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2 word "nigger" -- you've heard the word

3 "nigger" used in the workplace?

4 How long has the word --

5 How long has it been since you've

6 heard the word "nigger" used in the workplace?

7 A. Oh, sorry, it's been years before

8 I became a supervisor.

9 Q. Do you recall Ms. Donoghue

10 instructing you in or around March of 2007 for

11 you to speak to your staff about refraining

12 from using the word "nigger" at work?

13 A. Yes.

14 Q. You do recall that conversation?

15 A. Yes.

16 Q. And what prompted her to tell you

17 to do that?

18 MS. KALE: Objection.

19 A. I believe there were some claims

20 that it was being used and she thought she

21 should let me know, to let me know that I  
22 enforce it, not to use it, but to my  
23 knowledge, anyone using it, they could use it  
24 when I am not present. I am one person and I  
25 am not generally in every part of the

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2 department.

3 But if anyone -- I do remember

4 her, you know, letting me know, telling me

5 that. I believe the way she worded it, it is

6 technically -- she had two sides to the word

7 that I think it is not illegal, but she

8 prompted me, like she didn't want the staff to

9 use it. In other words, if a staff was to use

10 it, there are no, I think, legal -- it is not

11 a legal form of discrimination, to my

12 understanding.

13 Q. What is not a legal form of

14 discrimination?

15 A. The N word. But the bottom line

16 was she didn't want the staff to use it.

17 Q. Do you recall the conversation,

18 sometime in the winter of 2007, where a

19 comment was made about placing -- in the

20 workplace, where a comment was made about

21 placing Jamaicans on the top of a mountain and

22 giving them a shovel?

23 A. No.

24 Q. You never heard that?

25 A. Never, ever, ever heard that.

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2 Q. Do you recall another  
3 conversation in the workplace around the same  
4 time, maybe the winter of 2007, where it was  
5 said that men who live at home are feminine?

6 A. No.

7 Q. You have no recollection of any  
8 conversation of that nature?

9 A. No.

10 Q. Never heard it?

11 A. No.

12 Q. Do you recall speaking to Sheila  
13 Donoghue about whether or not a conversation  
14 about men living at home being feminine ever  
15 took place?

16 A. She might have, at some point  
17 before the Edmund Bryan lawsuit, that she may  
18 have mentioned to me that that was one of his  
19 claims, detailed claims, and that's the only  
20 time I believe I heard it.

21           Q. Did you ever have a conversation  
22       with Sheila Donoghue about a claim about the  
23       statement about Jamaicans being placed on top  
24       of a mountain?

25           MS. KALE: Objection.

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2 A. No.

3 (Recess taken.)

4 Q. All right, Mr. Gillette, do you  
5 recall receiving a memo from your supervisor  
6 John Meggs dated August 3, 2006, if you  
7 remember, do you remember?

8 A. A memo?

9 Q. Yes, a memo.

10 A. In regard to what?

11 Q. In regard to the use of vulgar  
12 language in the workplace.

13 A. I don't remember.

14 Q. Do you recall receiving any  
15 documentation in writing from your supervisor  
16 John Meggs after Edmund Bryan had a hearing  
17 based on his complaints of discrimination?

18 A. I may have. Generally, whatever  
19 was taken place at the time in regard to  
20 Edmund Bryan, I believe John would send an

21 e-mail letting me know what the situation was.

22 Q. You don't recall receiving a

23 letter from Mr. Meggs in which he said you

24 would be held accountable if a staff member

25 made allegations related to the use of vulgar

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2 language in the workplace and those  
3 allegations were found to be meritorious or  
4 have some basis in fact?

5 MS. KALE: Objection.

6 A. Generally, the word I would be  
7 held responsible would be a word that he would  
8 use commonly and he used that to describe any  
9 staff, you know, once he -- once I was  
10 instructed to have staff do things in a  
11 particular way.

12 If he found that I did not pass  
13 it on to the staff or made sure staff adhered  
14 to whatever specific rule or thing he wanted  
15 done, then I would be held responsible.

16 So oftentimes, he would send an  
17 e-mail about the specific thing, whatever it  
18 may be, and he would say I am going to hold  
19 you responsible to make sure the staff do so  
20 and so, whatever the case may be.

21 I got an e-mail from John every  
22 single night, specific e-mails in terms of --  
23 I may have received it, I don't recall.  
24 Q. You don't recall receiving a  
25 document from your supervisor John Meggs in

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2 which you were told that you had to set an  
3 example to staff in the importance of adhering  
4 to the hospital's policies regarding.

5 MS. KALE: Objection.

6 A. The words are familiar, I may  
7 have received it. I don't recall  
8 specifically, but I may have, I'm not sure.  
9 The words sound familiar.

10 Q. You said that the words "you will  
11 be held accountable," those are words you say  
12 you heard Mr. Meggs use frequently?

13 A. Used frequently.

14 Q. So you didn't attach any special  
15 weight or importance to him using those words  
16 in connection with the issue of vulgarity in  
17 the workplace as opposed to another issue?

18 MS. KALE: Objection.

19 A. Wrong. Even though he used the  
20 word "frequently," I used the same weight.

21       There was no difference in weight.

22           Q.   So how much -- I'm sorry, go

23   ahead.

24           A.   Equal weight, the weight equals

25   the effect, meaning, if the thing is

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2 important, then that is the weight it  
3 deserves. And in cases and situations like  
4 these, the appropriate weight as needed is  
5 what I put on it.

6 Q. And what was the appropriate  
7 weight that you placed on the issue of the use  
8 of vulgarity in the workplace?

9 A. Make sure it doesn't happen.

10 Q. How did you go about making sure  
11 it doesn't happen?

12 A. Staff meetings. I would have a  
13 staff meeting and I would explain to staff in  
14 like in the same instance where this incident  
15 happened with Efrain Perez and the first night  
16 I received the e-mail of the incident, I  
17 responded back to John Meggs. The following  
18 night he responded back to me and that same  
19 night, I had a staff meeting.

20 Q. Do you recall signing a document

21 addressed to you by John Meggs in which you  
22 were told that you would be held accountable  
23 resulting in termination of employment should  
24 a staff member make allegations related to  
25 issues of anti-harassment or nondiscrimination

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2 and an investigation into the allegations was  
3 found to have merit?

4 MS. KALE: Objection.

5 A. No.

6 Q. You don't remember signing off on  
7 a document like that?

8 A. No.

9 Q. Did John Meggs speak with you  
10 about the use of vulgar language in the  
11 workplace?

12 A. Yes.

13 Q. Do you recall the first time this  
14 occurred?

15 A. No.

16 Q. How frequently would you say you  
17 and Mr. Meggs had conversations about the use  
18 of vulgar language in the workplace?

19 A. There was no frequency.

20 Q. Excuse me?

21 A. There was no frequency.

22 Q. There was no frequency?

23 A. I believe, when he first arrived

24 at the institution in the beginning, which is

25 prior to, I believe, the meeting I had with

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2 the other director, manager, before John came,  
3 is that when John came to the institution,  
4 shortly after that, I think he was brought up  
5 to speed with the present situation and early  
6 back then, I believe, is when I spoke to John  
7 or he spoke to me and we spoke about it, but  
8 there was no frequency about it after.

9 Q. You only spoke with him on one  
10 occasion with him about it?

11 A. And then I believe there was a  
12 situation where the situation with Efrain  
13 Perez or there may have been another time when  
14 some allegations were made as to certain  
15 things being said in the department, but over  
16 the years, there was no frequency, but it  
17 might have been a couple of times.

18 Q. When you say a couple of times,  
19 it could have been more than two?

20 A. I couldn't say.

21           Q. Do you recall testifying at a  
22   hearing before the New York Human Rights  
23   Commission related to complaints made by  
24   Edmund Bryan?

25           A. Yes.

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2 Q. Do you recall testifying that you  
3 had used the word "faggot" in the workplace,  
4 if you recall?

5 A. I believe so.

6 Q. You also recall testifying that  
7 you used the word "nigger" in the workplace?

8 A. I believe so.

9 Q. At the point in time that you  
10 used this language, in particular, the word  
11 "faggot," had you ever directed the word  
12 "faggot" to someone who was one of your  
13 subordinates?

14 A. No.

15 Q. Who is Audley Young?

16 A. He was one of the staff that used  
17 to work with us.

18 Q. For how long did he work  
19 underneath you at the hospital?

20 A. Maybe five years.

21 Q. Do you know who Michael Harvey

22 is?

23 A. Yes.

24 Q. Who is Michael Harvey?

25 A. He was also a staff that worked

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2 with me on the night shift.

3 Q. Do you recall telling Mr. Harvey  
4 that Rastafarians had lice?

5 A. No.

6 Q. You never made that comment to  
7 him?

8 A. No, absolutely not.

9 Q. Was Mr. Young one of the people  
10 who you used to have a social relationship  
11 with that now doesn't work at the hospital?

12 A. I never had a social relationship  
13 with Audley Young. He no longer works for the  
14 institution.

15 Q. Okay. And did you have a social  
16 relationship with Mr. Harvey?

17 A. No. Not to mention the fact, I  
18 remember one time, I made the mistake and I  
19 spoke to Mr. Harvey, I used the word "dude."

20 Q. Sorry?

21 A. The word "dude."

22 Q. Yes.

23 A. You know, in speaking to him,

24 like dude -- and he got highly offended and

25 told me never to call him dude or to call him

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2 by his name. So for me to tell him that he  
3 had lice, he wouldn't take it lightly, so  
4 there is no way I could possibly say that to  
5 him.

6 If I can't say dude, I don't  
7 think I can tell him you have lice. And when  
8 I said dude, it was like he got highly  
9 offended. It was like I've said dude to other  
10 guys and I think, in some cases, it is a  
11 common word, it is like bro. With him, he got  
12 highly offended. He told me never to speak to  
13 him by that name and call him by his name.

14 Q. Do you recall receiving a  
15 document from John Meggs where he said that it  
16 has come to his attention that you've  
17 exhibited a propensity to use inappropriate  
18 language in the workplace?

19 MS. KALE: Objection.

20 A. Not a letter. I believe what had

21 happened after the Edmund Bryan lawsuit is  
22 that the institution had wrote up a letter  
23 against me and some of the words in the  
24 letter, I believe, that was one of the words  
25 "propensity." And the letter was worded to

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2 some degree like what you just read.

3 Q. Uh-huh.

4 A. It was like a conclusion to the  
5 case and what the institution -- what their  
6 response was to me. As far as I know, that is  
7 all.

8 Q. First, what did you understand  
9 the word "propensity" to mean in that context?

10 A. Propensity to mean have a  
11 tendency to.

12 Q. Okay.

13 A. I didn't agree with it. I feel  
14 like a final conclusion was the end result of  
15 something that was concluded from a past  
16 practice. That I don't think years ago, you  
17 know, I've been working for the institution  
18 for 34 years and I can say the policies that  
19 are there now was not there 34 years ago.

20 I perceived the institution as in

21 like socially things evolve, but when the  
22 letter was written, it was more written not in  
23 an evolutionary response to what I had done,  
24 but they had brought me from a past and  
25 exacted me to the present.

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2 So there was no, in my perception  
3 of myself, there is no propensity. What I did  
4 in the past was not a tendency, it was an  
5 exact thing I did deliberately based on the  
6 circumstances.

7 The present, as the institution  
8 has brought to my attention what their policy  
9 is, then from what I did in the past now  
10 changed to the future.

11 Well, in conclusion to the  
12 lawsuit, the letter, I believe, as it was  
13 written with tendency and propensity against  
14 me, they were taking a past act and bringing  
15 it into the present, not understanding that as  
16 time goes on, changes are made in terms of  
17 policies and it is an evolutionary process, so  
18 I don't believe I have a propensity.

19 It is what I did in the past, it  
20 was deliberate, it was conscious, but at the

21 time, I thought it was appropriate, given the  
22 fact that everyone as in like the environment,  
23 it was all male, and all the males, you know,  
24 it was like guys speak to each other, we have  
25 a particular language, I don't think women

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2 speak to each other the way guys speak to each  
3 other.

4 We didn't take it out of our  
5 environment. It was a closed environment  
6 within the institution, but it was a process  
7 that's from the past and in conclusion, they  
8 brought the past up to the present and exacted  
9 me with it.

10 Q. Okay.

11 A. And how those words come to be  
12 with propensity, tendency, I have no tendency.  
13 If the hospital has a policy and they want it  
14 as such, that is what I follow. No tendency,  
15 propensity, I don't have it. I follow the  
16 policy as it is described.

17 But at the time, that goes many  
18 years back, you know, it's -- I mean, I have  
19 an incident where Edmund Bryan, when he first  
20 came on the night shift, my back was turned to

21 him and I was wrapping some Mayo trays and he

22 grabbed my ass. And I turned to him and I

23 said I don't play like that.

24 It is my understanding on the

25 evening shift where he worked prior, other

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2 guys told me this, Jim Appollo had like  
3 specific people working decontam, as a result  
4 of that, they would get to leave early, so it  
5 became a specific group of guys, and one of  
6 the guys told me that when they worked in  
7 decontam, they would walk around and grab each  
8 other by the crotch.

9 Now, I don't know if when he  
10 started working nights that he thought that  
11 was a common practice, but he grabbed my ass.

12 Now, at the time, you know,  
13 given -- this is like maybe 15 years ago,  
14 given a policy like that, I imagine if you  
15 were to touch an employee now, you would be  
16 terminated. It is not -- it is a given.

17 At the time, you know, I didn't  
18 think to make a big deal out of it. I could  
19 simply tell the person, which I did, I don't  
20 play like that, which is exactly what I told

21 him. He's never done it again.

22 But it is just to say that I

23 believe, like everything, the institution

24 evolved, but at the end of the lawsuit and the

25 case was over, the letter with propensity

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2 being put to me, I believe was inaccurate to  
3 what I was doing.

4 Q. Do you know how many different  
5 times you had communications in writing from  
6 your superiors about the use of inappropriate  
7 language in the workplace?

8 A. No.

9 Q. So it's possible it's been more  
10 than once?

11 A. Yes.

12 Q. As far as the timing of this  
13 correspondence, has it all been within the  
14 past three years?

15 A. No.

16 Q. When was the first time you can  
17 recall that you received correspondence from  
18 your superiors about the use of inappropriate  
19 language in the workplace?

20 A. It was probably shortly after I

21 had told Edmund he couldn't ride with me

22 anymore, I believe.

23 Q. When was that?

24 A. I don't know. It was many years

25 ago. It was shortly after that, that I

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2 believe complaints started to happen, that's  
3 when I had a meeting with, I believe, the  
4 manager, the director at the time.

5 Over the years, policies kept  
6 changing, you know, like one thing would be  
7 picked at, well, you can't do this, you can't  
8 do that. Up until the last situation where I  
9 thought we were following the hospital  
10 guidelines and then Efrain Perez goes and  
11 speak to Lennox.

12 Now, prior to that, there was no  
13 way I was going to say to anyone, as I didn't  
14 to Efrain Perez, you cannot speak, you know,  
15 with an accent. The thought had not crossed  
16 my mind at the time, I didn't know of any  
17 institution policy being as such. You cannot  
18 speak to anyone with an accent aside from the  
19 perceived origin or culture that you are from.

20 Then the incident happened and as

21 things are brought up from the institution  
22 like that, for example, you can't do that.  
23 Each time it was brought to my attention, I  
24 made the necessary adjustment.  
25 As far as policy goes, there was

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2 no way, I think, I would have assumed that the  
3 hospital had a policy and I don't think you'll  
4 find it in a handbook, but for someone to  
5 speak with an accent outside of their culture,  
6 origin, that it could be perceived as  
7 discrimination or discriminatory remark. You  
8 know, based on the context, I just didn't  
9 think an accent would -- would reveal that.

10 So at the time it was brought to  
11 my attention, and my point in saying that is  
12 there were several points over many years that  
13 was brought to my attention to the point where  
14 in the same sense you play a radio station and  
15 now, we are down to one, you know, you put a  
16 radio station, maybe whatever this staff feels  
17 like listening to, nothing personal, but  
18 broadcast, now, we are narrowed down to one.

19 So I believe it has been a  
20 process that has been working for many years

21 where I just continue to get more and more  
22 information as to what not to do, not that it  
23 was ever laid out in the beginning. It was  
24 and has been over the years a graduating  
25 process.

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2 And the last incident is one I  
3 described where you cannot speak with an  
4 accent outside of your so-called culture or  
5 origin, but each time it was brought to my  
6 attention, I would address it. I would fix  
7 it. I would change it to whatever the  
8 hospital wanted the policy to be.

9 Q. Have you ever had sensitivity  
10 training for your job?

11 A. Yes.

12 Q. When was the last time you had  
13 sensitivity training?

14 A. I think in December.

15 Q. Of what year, please?

16 A. '07.

17 Q. Okay. Just briefly describe what  
18 that training was, if you can.

19 A. The last one I had, it revolves  
20 around respect in the workplace, like people's

21 culture, skin color, all of what would, I  
22 guess, another individual would perceive as a  
23 form of discrimination or prejudice. They  
24 would define details as to how to react, how  
25 to respond and how to perceive things.

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2 Q. Okay. Do you believe now that  
3 you understand what the hospital's policy is  
4 on harassment and antidiscrimination in the  
5 workplace?

6 A. It is not that I don't  
7 understand. It is more of what the hospital  
8 policy is. I don't set them. It has nothing  
9 to do with me. It is not a matter of my  
10 perception. I have my life and my perception  
11 and my opinion, but when you get in the  
12 institution, it doesn't count, it doesn't  
13 matter, it is what the institution's policy  
14 is.

15 Q. Okay.

16 A. So I don't make policies, none of  
17 what is being worked out of there is a matter  
18 of my opinion, it doesn't matter.

19 Q. Okay.

20 A. It is the hospital's policy. So

21 I separate my personal opinions, I separate my  
22 personal beliefs from the hospital's policy.

23 Q. Okay.

24 A. When the hospital brings it to my  
25 attention that they want a particular policy

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2 to be adhered to, I implement it.

3 Q. Okay.

4 A. But I don't make policies, I  
5 don't give interpretations, I just follow  
6 them.

7 Q. As a supervisor, it is one of  
8 your job duties to make sure that the people  
9 under your supervision comply with hospital's  
10 policies, correct?

11 A. Correct.

12 Q. All right. And as such, it is  
13 also part of your job description to  
14 understand or to know what the hospital's  
15 policies are, correct?

16 A. Like I explained, that is what I  
17 was explaining to you before, the hospital  
18 tells me what their policy is, okay?

19 Q. Okay.

20 A. I'll take the policy and I'll

21      implement it. By that, I mean I'll make sure  
22      that staff adheres to it, you know, if I see a  
23      policy being broken of the institution, I'll  
24      remind the staff, whatever, this is the  
25      policy, this is the institution's policy and

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2 you need to follow it.

3 Q. Okay.

4 A. So I, as the supervisor, make  
5 sure that all hospital policies are followed  
6 by the staff, all staff.

7 Q. It is safe to say then, by your  
8 definition, that you did not fully grasp what  
9 the hospital's non-discrimination and  
10 anti-harassment policy was when Efrain Perez  
11 was mimicking other people's languages,  
12 correct?

13 MS. KALE: Objection.

14 A. No.

15 Q. You --

16 A. Define fully grasp, you'd have to  
17 tell me what fully grasp is for me to answer  
18 your question.

19 Q. Well, if a --

20 A. The reason I say that, at no

21 point -- the incident with Efrain Perez, and I  
22 don't know of it being in any handbook,  
23 hospital policy-wise, that if an employee  
24 should speak with an accent and he walks in on  
25 First Avenue and he speaks with an Australian

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2 accent and he's Puerto Rican, I don't know of  
3 any hospital policy handbook that says if you  
4 walked in on hospital property and you're an  
5 employee and you did not speak Puerto Rican or  
6 Spanish, so to speak, and you spoke with an  
7 Australian accent, you are in violation.  
8 Nowhere in the handbook, no way, shape or form  
9 was it to be grasped by me from anything that  
10 the institution may have put out in their  
11 handbook or explained.

12 Q. So unless a specific instance  
13 occurs that you are told is in violation of  
14 the policy, you cannot identify whether or not  
15 a specific instance is an indication of  
16 discrimination?

17 MS. KALE: Objection.

18 A. No.

19 Q. So how would you know?

20 A. I am only speaking about this

21 particular incident.

22 Q. Well, we are talking about you as  
23 a supervisor because, as a supervisor, there  
24 may be times that instances occur, experiences  
25 that occur that you have not heard?

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1 R. Gillette

2 A. Yes.

3 Q. And you may have to come to some  
4 sorting of decision as to whether or not that  
5 new incident falls within the guidelines of  
6 the policy, correct?

7 MS. KALE: Objection.

8 A. Yes.

9 Q. All right.

10 So how do you apply, how do you  
11 go about determining whether or not an  
12 incident, and we're specifically talking about  
13 discrimination and -- well, discrimination in  
14 the workplace, how do you go about determining  
15 whether or not an incident is -- goes against  
16 the hospital's policies on discrimination in  
17 the workplace?

18 MS. KALE: Objection.

19 A. I have -- I have the hospital  
20 policy, but I also have the sense that I can

21 also use intentions of a said individual  
22 against another individual and whatever may  
23 transpire between the two. I believe I can  
24 exact anything that would be inappropriate for  
25 maybe one staff to say or do to another staff

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2 that could be new, as you asked.

3 Q. Yes.

4 A. Not an incident that was

5 established by the institution, but I am open,

6 and I do believe I have the senses to be able

7 to discern a situation that is offensive and

8 that's totally open, it could be anything, but

9 I do believe, outside the guideline, I can

10 tell that if one staff should be offensive to

11 another staff, whatever that may be, I believe

12 I have the ability to discern the

13 offensiveness of it and at that time, do

14 something about it.

15 Q. You were unable to do that in the

16 case of Efrain Perez, correct?

17 A. I was not there at the time.

18 Q. Okay. But you stated before that

19 you had heard him -- strike that.

20 A. That's not what I said.

21 Q. Had you heard him in the past use

22 other accents in the workplace?

23 A. Yes, Australian, English, when he

24 did that, I didn't find it offensive.

25 Q. You didn't -- all right, okay.

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1 R. Gillette

2 A. You know he spoke with -- he did  
3 an Australian accent where I think there was  
4 this guy, the Australian outback, I think we  
5 are all familiar with.

6 Q. Crocodile Dundee?

7 A. Yes.

8 Q. Right.

9 A. And he did an accent and the  
10 accent, I thought, was pretty exact to the way  
11 the guy spoke. When he did that, I didn't  
12 find it offensive. Then he did an  
13 impersonation of Sean Connery, which I thought  
14 was really exact. When he did the  
15 impersonation of Sean Connery, I didn't think  
16 he was violating hospital policy to do an  
17 impersonation to Sean Connery.

18 I could have said, Efrain, you  
19 are in violation of Memorial Sloan-Kettering  
20 by impersonating Sean Connery, but I did not.

21 I didn't think it was offensive and I didn't  
22 think, by me using my common sense to discern  
23 his approach, I didn't think he was trying to  
24 be. And at which point, I didn't make it my  
25 business to shut him down and to say this is

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2 not hospital policy, you cannot, in here on  
3 hospital property, do an impersonation of Sean  
4 Connery. I didn't. I didn't find it  
5 offensive. Still don't.

6 Q. So when you found out that he was  
7 doing impersonations of a Jamaican accent, was  
8 he doing an impersonation of Bob Marley or was  
9 it a generic Jamaican?

10 A. I never heard him do an  
11 impersonation of a Jamaican accent.

12 Q. Okay.

13 A. The way I got this information  
14 was from John Meggs.

15 Q. So at the point in time when you  
16 got that information, you did not interpret  
17 him doing an impersonation or attempting to do  
18 an impersonation of a Jamaican as being  
19 offensive?

20 A. No.

21 Q. And as we sit here today, do you  
22 feel that that is appropriate behavior for the  
23 workplace?

24 MS. KALE: Objection.

25 A. My opinion?

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2 Q. Yes, your opinion.

3 A. If the person -- if the person's  
4 intention is not to be offensive, it is okay.

5 Q. So based on, and this is just  
6 what I wanted to get to, based on what you  
7 said, the manner in which you determine  
8 whether or not someone's behavior violates the  
9 hospital's antidiscrimination policy, is based  
10 on the person who is engaging in the  
11 activity's intention?

12 MS. KALE: Objection. The  
13 witness answered the question. We  
14 can't have a summary. You asked him,  
15 he answered. That's it.

16 MR. SCOTT: Again, that is  
17 another speaking objection. Either he  
18 can answer the question or he can't.

19 A. I explained to you before how I  
20 see it and what my response would be.

21 Q. What I am looking for is clarity.

22 You focus on the intention on the

23 person engaging in the activity, correct?

24 A. No, what I explained to you

25 before is it depends. I never said how I

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2 would discern it. I was specific in response

3 to one specific reality, but in prior

4 question, what I explained to you is --

5 Q. Go ahead.

6 A. At the given time, relative, it

7 is a relative situation and I cannot say how

8 the situation would be, depending on what the

9 situation is, is how I would -- whatever tool

10 I would use to discern it is relative, but I

11 never gave you a formal -- an exact one that

12 would cover all.

13 Q. Well, could you --

14 A. It is a relative situation and I

15 cannot.

16 Q. Could you try?

17 A. No, I cannot.

18 MS. KALE: Objection.

19 A. I don't know what each situation

20 would call -- I don't know, it could be this

21 specific, that specific, I don't know, but it  
22 would be relative, but I did respond to this  
23 specific one.

24 Q. And in this one, it was the  
25 intention of Efrain towards Lennox, correct?

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2 A. Yes.

3 Q. Okay.

4 A. And as far as I know, I've  
5 witnessed Lennox, which is a staff at Memorial  
6 Sloan-Kettering, and Efrain every night when  
7 they come in, they are friends, I would  
8 consider them friends, they greet each other  
9 with a hello and there is no, and I believe  
10 other staff can back this up, there is no  
11 animosity between the two.

12 I believe if you were to ask  
13 Lennox how did he perceive Efrain's approach,  
14 was it offensive, did Efrain mean to offend  
15 him, I believe Lennox would say no. I know  
16 within the context of their experience, it is  
17 my perception there were no ill intentions  
18 from Efrain Perez towards Lennox.

19 Q. And using that same logic, two  
20 African-American males using the word "nigger"

21 in the workplace as well is not a violation of  
22 the hospital's antidiscrimination or  
23 harassment policy, if the two using the  
24 language don't find it offensive to one  
25 another?

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1 R. Gillette

2 MS. KALE: Objection.

3 A. I thought that was established.

4 Yes, it is. That is the policy now. Sheila  
5 Donoghue, I had explained that to you before,  
6 she explained to me she doesn't want it used  
7 in the workplace, so it would be in violation.

8 Q. So the intent wouldn't matter in  
9 that circumstance?

10 MS. KALE: Objection.

11 A. No, it wouldn't, because the  
12 policy was exact.

13 Q. What is a Corrective Action  
14 Process form?

15 A. It is a form where an employee,  
16 for whatever reason, can be written up, you  
17 get a verbal warning, you get a written  
18 warning, and then I think the final step would  
19 be a written warning that can result in  
20 suspension and final would be termination.

21 Q. Have you ever written up Edmund

22 Bryan for not training other employees?

23 A. I believe there was a note in his

24 file as to that matter, yes.

25 Q. Do you recall the specifics of

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1 R. Gillette

2 that?

3 A. I believe, as part of your job,  
4 for all staff, is that staff has been there  
5 longer and know the job, a part of their job  
6 is to train new staff and I believe I had  
7 asked Edmund Bryan to train someone and he  
8 refused.

9 Q. Okay.

10 A. I passed the information along to  
11 a manager, which I believe at which point, the  
12 manager told me that I should tell him that  
13 this is a part of his job and I believe the  
14 matter was settled. He then understood it was  
15 a part of his job.

16 I believe, it is my  
17 understanding, that the manager had spoken to  
18 Sheila Donoghue from human resources and, you  
19 know, had spoken to her and this is a part of  
20 your job, so he is an employee, so if this is

21 what is requested of him, he needs to do. I

22 believe the matter was settled. John had

23 explained to me to explain to him that this is

24 part of your job.

25 Q. Did you write him up on that

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2 occasion?

3 A. I think I had put a note in his

4 file that he refused.

5 Q. When you say you put a note, did  
6 you fill out a Corrective Action Process form?

7 A. No. Before you use a formal form  
8 to write someone up, you can make notations  
9 about a situation that may transpire and put  
10 it in their file before you go to a write-up.

11 I believe I had just written a  
12 note, maybe I -- I don't remember exactly what  
13 I did, maybe I wrote it up, who knows, I don't  
14 know, but either way, I believe something went  
15 in his file in regard to him refusing to train  
16 another employee.

17 Q. Do you recall who this employee  
18 was?

19 A. No.

20 Q. Have you ever asked Edmund Bryan

21 to train Miguel Ruiz?

22 A. Who?

23 Q. Miguel Ruiz?

24 A. I don't think so, no.

25 Q. And other than that one occasion

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2 that you are referring to, you don't have any  
3 other recollections of Edmund Bryan refusing  
4 to train other employees?

5 A. I don't think -- I think that is  
6 the one incident. I believe it was that one  
7 time, I believe.

8 MR. SCOTT: I just need a few  
9 minutes.

10 (Recess taken.)

11 MR. SCOTT: Back on the record.

12 Q. Mr. Gillette, we want to just  
13 show you a couple of documents, we want to go  
14 through them and have a quick little  
15 conversation about each of them, okay?

16 MR. SCOTT: Mark this for  
17 identification.

18 (Sterilization record marked

19 Plaintiff's Exhibit E for

20 identification, as of this date.)

21 Q. Mr. Gillette, I'd like you to  
22 take a look at that document and just look up  
23 when you are done looking at it.

24 A. Okay.

25 Q. Mr. Gillette, do you recognize

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2 what that document is?

3 A. Uh-huh. Yes.

4 Q. What is it?

5 A. It is a sterilization record.

6 Q. This sterilization record, is

7 that an entire document or is it a portion of

8 it?

9 A. It is a portion of it.

10 Q. Which portion is the

11 sterilization record?

12 A. I believe the bottom part.

13 Q. Okay. Just so we can get some --

14 when you say the bottom part, are you

15 distinguishing just between the top and the

16 bottom or the typewritten and handwritten

17 portions?

18 A. No, there is more, the whole

19 document, the printout, should be from about

20 here to here.

21 Q. Okay.

22 A. So the top half is missing.

23 Q. Do all sterilization records have

24 the handwritten -- there's handwritten

25 information on the left and right and then

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1 R. Gillette

2 typewritten?

3 A. No, that is something I wrote. I

4 think it was brought to my attention that the

5 sterilize time was wrong and I think the

6 number I put on the side should be different.

7 It should be 10 minutes.

8 I think the morning shift had

9 brought it to my attention that the load ran

10 at the wrong cycle, so I wrote on the paper

11 that they left me and I believe I showed it to

12 Edmund.

13 Q. So the -- and just so we are

14 clear, there is a column of typewritten

15 numbers and then words in the middle of this

16 page, correct?

17 A. Um.

18 Q. Was that a yes, sir?

19 A. What are you asking?

20 Q. Just so we are clear, there is a

21 typewritten column in the middle of the page

22 with numbers and words, correct?

23 A. Yes.

24 Q. On the right and left of that is

25 handwriting?

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1 R. Gillette

2 A. That is my handwriting.

3 Q. And it is your handwriting on  
4 both sides, right and left?

5 A. Yes.

6 Q. And you're saying that this  
7 was -- I won't put words in your mouth.

8 Why did you put the handwriting  
9 on either side of this, sir?

10 A. I believe the sterilization time  
11 should have been different.

12 Q. Okay. And you referenced, you  
13 said you showed this to Edmund Bryan.

14 Why did you do that?

15 A. I believe the morning shift had  
16 brought it to my attention that it was wrong.

17 Generally, we run loads at night and all the  
18 load sheets are initialed by two people, two  
19 staff, and from time to time, a load can be  
20 wrong in terms of its sterilization perimeters

21           There is a staff, staff on the day  
22    shift, they come in at 7:00 in the morning and  
23    their job, specific staff, is to go over all  
24    the records, all the steam or gas sterrad  
25    sterilization records and to check them for

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2 accuracy. If it is inaccurate, they will let  
3 me know.

4 Q. Okay.

5 A. And I believe, for some reason,  
6 this sterilization time, I believe, I think it  
7 is a gas load, and the sterilization is saying  
8 30 minutes, which is wrong. A gas load should  
9 run presently with the sterilizer we have,  
10 now, if you run a gas load, it will run  
11 minimum of one hour sterilization time. If  
12 you see here, it is saying 30 minutes.

13 Q. Okay.

14 A. And I believe, I mean, I have  
15 seen this at the time when the load was  
16 unloaded and I believe it is general, like I  
17 usually get the information from the day  
18 shift.

19 Q. Okay.

20 A. What I did, I believe I wrote

21 this and I showed it to Edmund Bryan, that the  
22 perimeters were wrong.

23 Q. After showing it to Edmund Bryan,  
24 what did you do with it?

25 A. I just keep a record.

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1 R. Gillette

2 Q. When you say keep a record?

3 A. Of all mistakes that staff makes,  
4 I'll get a copy of like sometimes they will  
5 assemble trays or like in a situation like  
6 this, the day shift will give me a copy,  
7 something like that.

8 Q. Okay.

9 A. And I have a file that I just  
10 keep all the files in. Reason for keeping  
11 that is that if a particular staff continues  
12 to make mistakes, you know, I have copies of  
13 and I can show the staff all the mistakes they  
14 have made, so it is just -- I just keep it in  
15 a file, all right?

16 Q. Did you tape this up on a wall  
17 somewhere in the unit?

18 A. No. There is no reason to do  
19 that, no.

20 Q. Did you give a copy of this to

21 Edmund Bryan?

22 A. No. I don't give staff -- if

23 staff makes a mistake and I get a copy of

24 whatever the mistake is, I would show the

25 staff, but I would keep it in a file.

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2 And I have a file, presently all  
3 the, for example, I get a lot of like  
4 sometimes, we have problems with like tray  
5 assembly and I would get a copy from the day  
6 supervisor because what they do on days is  
7 they make rounds in the operating room and all  
8 the charge nurses, they keep copies of  
9 mistakes that are made on tray assembly and  
10 the supervisor would collect all the mistakes.

11 Q. Okay.

12 A. She would bring them down and  
13 distribute them for like mistakes for the  
14 night shift and she would distribute mistakes  
15 for the evening shift and so on.

16 I would take the specific  
17 mistake, because generally in the OR, they  
18 would write this is missing or this is added  
19 or this was bent or this was dirty, and they  
20 note it next to the specific instrument, the

21 problem.

22 Q. Okay.

23 A. So what I would do is I would

24 take that copy of whatever it is and I would

25 speak to the staff and I would show them

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1 R. Gillette

2 whatever the mistake is. They'll understand

3 and I'll take this specific paper and I'll

4 file it.

5 Q. So this was never taped up in the

6 unit?

7 A. Absolutely not. No reason to.

8 Q. And you didn't take it down after

9 Mr. Bryan received his right to sue letter

10 from the EEOC?

11 MS. KALE: Objection.

12 A. Take what down?

13 Q. Take the document that is in your

14 hand down?

15 A. It was never taped up or pasted

16 up in the unit.

17 MR. SCOTT: Mark this for

18 identification.

19 (Document marked Plaintiff's

20 Exhibit F for identification, as

21 of this date.)

22 Q. Mr. Gillette, take a look at that

23 document, it has been marked as Plaintiff's

24 Exhibit F, and let me know when you are done.

25 MS. KALE: I would just like the

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1 R. Gillette

2 record to reflect that this is an

3 attachment or an exhibit and we have

4 not -- it is not a complete document,

5 whatever it is, it is an exhibit to, it

6 is not in front of us.

7 MR. SCOTT: Okay.

8 A. Okay.

9 Q. Mr. Gillette, have you seen this

10 document before?

11 A. I've seen these words in

12 something other than -- I believe this -- I've

13 seen these words before.

14 Q. When have you seen them before?

15 A. I don't remember. At some point

16 in time, I have. I believe it might have been

17 before the actual lawsuit that -- these words

18 are the same words I see in after the lawsuit

19 that was written, it looks pretty much the

20 same to me.

21 Q. Okay.

22 A. There is one letter I know of

23 that had these words in it.

24 Q. You haven't seen this on a

25 separate occasion?

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1 R. Gillette

2 A. I don't remember.

3 Q. Do you recall having any  
4 conversations with John Meggs about your use  
5 of references to employee's sex, race, age,  
6 religion, national origin or sexual  
7 preference?

8 A. No.

9 Q. You never had any conversations  
10 with John Meggs about that?

11 A. No. The conversations I had with  
12 John Meggs was when John Meggs told me what  
13 the hospital policy was. We never had a  
14 conversation where he said did you say or  
15 there were conversations where he said, I  
16 believe, Edmund Bryan made certain  
17 accusations, but as far as John Meggs and I  
18 goes having a conversation as to like he  
19 asking me or -- he basically explained to me  
20 what he had heard and what he wanted me to

21       adhere to.

22           Q.   And when you say what he had

23       heard, what are you referring to?

24           A.   Allegations, I believe, on what

25       Edmund Bryan had gone to human resources and

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2 complained about, which got back to John

3 Meggs, whatever those accusations were.

4 Q. Are you aware -- sorry?

5 A. He told me accusations, I vaguely

6 remember some, and as a result of that, what

7 he wanted me to do in terms of policy,

8 hospital policy.

9 Q. Did any of those accusations

10 claim that you had used inappropriate language

11 towards Mr. Bryan?

12 A. Yes, I think I remember one time

13 that he claimed -- I believe he told me one

14 time Edmund Bryan said that I cursed him or I

15 spoke to him -- I guess you would say it is a

16 curse word, which totally contradicts my

17 approach to all staff.

18 I even, one time, I was speaking

19 to John and I believe in trying to bring about

20 a clarity about this accusation, this one from

21 Edmund Bryan, and in trying to clarify to him  
22 what kind of person that I am, I told him it  
23 has always been my business ever since from  
24 when I became in charge nights as a lead  
25 technician, is me, as a person, I've always

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2 made it my business to never, ever, and this  
3 is a conscious effort on my behalf, to tell a  
4 staff what to do.

5 I've always had the approach out  
6 of respect, I would say, to a staff and this  
7 continues to date and this is, I guess, been  
8 going on for 15 years, where I would ask a  
9 staff, I would say can you do this, can -- I  
10 always use the word "can" out of respect to  
11 know that, in truth, you cannot tell a person  
12 what to do.

13 I could tell you and you can turn  
14 around and walk out of the institution, so  
15 when we work in the workplace, it has always  
16 been my respect to other people, staff, that  
17 we are here under an agreement, not with I, as  
18 a person, having any authority over you. You  
19 are in agreement here that I, the supervisor,  
20 will be the person to make requests out of

21 various staff for them to do this and that.

22 I try to explain this to John. I

23 remember at one point, he said to me, no, tell

24 them what to do, you know, which I, of course,

25 I ignored, which I think is within my process

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2 as a supervisor. I don't think I am in any  
3 violation to request a staff to do something  
4 as opposed to tell them to do something.

5 So my point is for me to curse to  
6 any staff, Edmund Bryan or any staff, I  
7 wouldn't do it. I have too much respect for  
8 staff, people in the world, which is how I  
9 explained to you I approach staff. That would  
10 be in contradiction to me. Because I have  
11 made a conscious effort in my life to treating  
12 people, staff, anyone I work with, I've never  
13 told people what to do, I've always asked.

14 So for me to curse Edmund Bryan  
15 would be way out of the scope of the way I  
16 approach people. That was the point I used in  
17 trying to explain to John Meggs what the  
18 accusation that Edmund Bryan had made against  
19 me, that I am not that kind of a person to do  
20 that.

21           Q.   Were you ever put on notice that  
22   if you used inappropriate language in the  
23   workplace, you could be disciplined, including  
24   terminated?

25           MS. KALE:  Objection.

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1 R. Gillette

2 A. That was a given. I don't think  
3 at any point, I was put on notice, but I  
4 believe it was understood that, as a  
5 supervisor, if I'll be the one to make sure to  
6 implement hospital policy, I would be  
7 subjected to it also. It is not that staff  
8 would be subjected to it and I'm not. So,  
9 whatever the consequences are that any staff  
10 would face in violation, I am equal to face in  
11 violation, also.

12 Q. Okay.

13 MR. SCOTT: This was previously  
14 marked, but we'll mark it as G.

15 MS. KALE: Do you want to keep it  
16 as C?

17 Q. I'm showing you what was  
18 previously marked as Plaintiff's C.

19 Would you take a look at that  
20 document and read it.

21 Mr. Gillette, have you ever seen

22 that document before?

23 A. Yes.

24 Q. What is it?

25 A. It is a document going over the

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2 same process about inappropriate language,  
3 playing the radio, the same things, and I  
4 believe this was in the beginning -- I believe  
5 this was in response to complaints made by  
6 Edmund Bryan.

7 MS. KALE: I apologize it was B,  
8 not C.

9 MR. SCOTT: This document was  
10 previously marked as B.

11 Q. You've read the first paragraph  
12 of this document?

13 A. Okay.

14 Q. It states, essentially, this  
15 document was written after a hearing was had  
16 related to Mr. Bryan's complaints against or  
17 complaints for discrimination involving the  
18 hospital.

19 A. Okay.

20 Q. Do you see that, do you see that

21 in there, sir?

22 A. Yes, I do.

23 Q. Do you see the date of this, of

24 this letter?

25 A. 8/3/06.

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1 R. Gillette

2 Q. Does that -- did you receive this  
3 letter around that time?

4 A. I believe so.

5 Q. In the lower right-hand corner,  
6 it has your name typed, typed up, Rupert  
7 Gillette; is that correct?

8 A. Yes.

9 Q. And underneath that, there is a  
10 title, Supervisor CPD, is that your title?

11 A. Yes.

12 Q. And underneath that title, there  
13 is a signature?

14 A. Yes.

15 Q. And whose signature is that, sir?

16 A. That's mine.

17 Q. And to the left, there is a name,  
18 John Meggs, correct?

19 A. Yes.

20 Q. And underneath his name, title,

21 Manager, CPD?

22 A. Yes.

23 Q. Was that his title when he was

24 working with you at the hospital?

25 A. Yes.

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1 R. Gillette

2 Q. Okay. There is a signature next  
3 to that, do you recognize his signature at  
4 all, or no?

5 A. It looks like John Meggs'  
6 signature.

7 Q. All right. How did you come to  
8 get this document, how did you -- yes, how did  
9 you come to get it?

10 A. I believe it was the summer after  
11 the lawsuit. My perception of this letter is  
12 the institution felt like they had to respond  
13 to the court and in all of what's written here  
14 about me, I don't think -- like I was  
15 explaining before, the department has evolved  
16 and we started in the past where we had  
17 certain practices.

18 And the institution, in their  
19 response to me, they exacted me from the past  
20 to the now and they -- and in this letter, as

21 I said before, it is something that I've done  
22 in the past, the lawsuit was over and  
23 finished, and I think this was a letter that  
24 went against me in my file.

25 Q. Uh-huh.

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2 A. Which I don't believe it was  
3 really a point in sense of how things had  
4 transpired from the past, you know, I mean, if  
5 we did one thing in the past and this is the  
6 present, they brought the past into the  
7 present and held it against me.

8 Q. And what about the past was  
9 brought into the present in this letter?

10 A. Vulgar language. This was  
11 written -- let me look at it, discussion,  
12 vulgar language in the workplace, things of  
13 that nature, the radio, I mean, in the past,  
14 we used to play -- we used to play the  
15 radio -- okay? Now, you can't, so in the past  
16 we were able to put on various radio stations,  
17 now that's being held against me, I mean  
18 that's the past. But it is being held against  
19 me now.

20 So, you know, I'm not one to

21 haggle and, you know, they saw this, they

22 wrote it, I signed it, you know, if it makes

23 them happy, fine.

24 Q. You see the first clause of the

25 first sentence in the third paragraph, where

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2 it says:

3 "You and I have had many  
4 discussions not only on the use of  
5 vulgar language in the workplace".

6 Do you see that?

7 A. Not true. Not true.

8 Q. You state that is not true?

9 A. That is totally not true. The  
10 way the letter is worded, I remember reading  
11 it, that the perception of the letter is as to  
12 the exact detail as to how the department had  
13 evolved. This letter, in the way John had  
14 worded it, he is saying in this letter that to  
15 the exact detail, it says if he had taken  
16 now -- oh, we spoke about this in the past and  
17 here, we have Efrain Perez doing a Jamaican  
18 accent.

19 It isn't like the letter reads --  
20 because a lot of what got established, got

21 established over a period of time, not one  
22 time, but the letter, the way he wrote it, I  
23 don't know who wrote the letter, I imagine he  
24 did, it is inaccurate in its presentation as  
25 to how things had transpired over the years.

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2 So for him to say we have had many  
3 discussions, it is inaccurate.

4 Q. Okay.

5 A. What had taken place is, I  
6 believe, over the years, Edmund Bryan had gone  
7 in for every little thing you can think of.

8 Q. Uh-huh.

9 A. He had gone and complained about  
10 it and it didn't happen all at once. I  
11 believe the complaints kept coming up until  
12 the last complaint, it was like, okay, he  
13 complained about this, over a period, this,  
14 time go by, this, time go by, this, so it is  
15 being narrowed.

16 So John and I could not speak  
17 over a period of time about this, but he did  
18 word it like that to the point where now, the  
19 last complaint is Efrain Perez is speaking  
20 with a Jamaican accent. So if you read this,

21      you would think, well, we spoke about that

22      also, which we did not.

23             And I believe John, what he

24      addressed was as each complaint came up from

25      Edmund Bryan is he would then address the

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2 issue. As in like the last problem that came  
3 up from Edmund Bryan was Efrain Perez speaking  
4 with a Jamaican accent, there goes another  
5 one, we've never spoken about it. He did  
6 speak to me, but not like we spoke about all  
7 this, but he spoke to me and I addressed it.

8 So what I believe happened over  
9 the years is each of Edmund Bryan's complaints  
10 continued to happen over a period of time and  
11 each time it happened, but the accumulation  
12 was not like he stated, so that's not  
13 accurate.

14 So I am saying in the way he  
15 wrote the letter, which I, you know, I wasn't  
16 going to waste my time like, it is not  
17 accurate as to how things had transpired.

18 Q. Okay. There is a -- in the  
19 second full sentence of that third paragraph  
20 begins:

21 "These incidents have decreased  
22 within the past few months and you must  
23 be commended."

24 Is that also not accurate?

25 A. I would say --

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2 Q. You would say it is not accurate?

3 A. Inaccurate. The reason why I  
4 would say it is inaccurate is I believe after  
5 he -- after the first statement, we spoke  
6 about it, to close the statement and to show  
7 some result in the last few months. This has  
8 been going on gradually for years. It didn't  
9 just happen in a few months, as he stated.

10 Q. Well, he said that it's decreased  
11 in the last few months?

12 A. No, it's decreased over the years  
13 for each complaint, so that is inaccurate,  
14 what he stated there. It is not how it  
15 happened, namely, in the last few months, no.

16 Q. You said Mr. Bryan would complain  
17 over every little thing?

18 A. Every little thing.

19 Q. Would you view many of his  
20 complaints as nuisances?

21 MS. KALE: Objection.

22 A. They were counterproductive for  
23 the institution and for the department. We  
24 wasted a lot of time in debates, discussions  
25 about a lot of these things that, you know,

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2 were his complaints.

3 Q. For example, which of his  
4 complaints were a waste of time?

5 A. I asked him to train another  
6 staff and that turned into like a two or  
7 three-night ordeal, total waste of time.

8 Q. Okay.

9 A. There were incidents where one of  
10 the staff was singing out loud or to himself  
11 and he was singing something Selassie, I don't  
12 know how you want to spell it.

13 I believe there is some relation  
14 to that name, some kind of political leader.

15 Q. He was the first Crown Prince of  
16 Ethiopia. Many Rastafarians --

17 MS. KALE: Wait.

18 MR. SCOTT: We are having a  
19 conversation. Is there an objection?

20 MS. KALE: Yes, this is a

21 deposition not a conversation.

22 Q. Were you aware of that at all,

23 who Haile Selassie is?

24 A. I couldn't remember, but just

25 now, when you brought it to my attention, it

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2 comes back to me.

3 Q. Are you aware that many Jamaican  
4 Rastafarians view him in very high regard?

5 A. Yes.

6 Q. Thank you. You can continue,  
7 please.

8 A. Now, Kenneth Williams was just  
9 doing like a rap and he said  
10 Selassie-something, which led to something  
11 else. Edmund Bryan, from his workstation,  
12 which is like all the way in the back, all the  
13 way to the corner to the right, jumped up in  
14 an extremely menacing way, like he was going  
15 to attack Kenneth Williams.

16 Q. Yes.

17 A. And said like, don't mess with my  
18 culture. Now, he's about 2 inches away from  
19 Kenneth's face, like this, like they are going  
20 to fight. That's the only thing I can think

21 of.

22 At which point, I stepped in, I

23 got Ken, I pulled Ken back and I said, Ken,

24 just wait here. I called security and that

25 particular night security had to come in and

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2 defuse Edmund Bryan and Kenneth Williams and  
3 there have been incidents with Edmund Bryan  
4 and Mike Rodriguez.

5 Q. What incident?

6 A. They argued, they started  
7 shouting. One night, Mike Rodriguez came up  
8 to him, and this was shortly after I stopped  
9 speaking to him, and was asking him something  
10 about a computer and he just went off verbally  
11 on Mike Rodriguez, at which point, Mike  
12 Rodriguez was very shocked at his response and  
13 he responded back. I had to defuse that.

14 There have been other situations  
15 where Edmund Bryan and Carol Grima, where I  
16 think there was another incident where he also  
17 did not want to help Carol Grima in the case  
18 room.

19 There have been other situations,  
20 I don't recall, I don't remember what

21 incident, but incident of complaints and  
22 situations where he would respond, I believe,  
23 is counterproductive to the department.

24 Q. Do you view any of his complaints  
25 about harassment or discrimination based on

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2 his national origin, do you believe those are  
3 counterproductive?

4 MS. KALE: Objection.

5 A. I first have to acknowledge that  
6 it is before I say it is counterproductive.

7 Q. You have to say it is what?

8 A. That it is a discrimination.

9 Q. No. Do you feel his complaint is  
10 counterproductive?

11 A. What is the complaint? I would  
12 have to know that first.

13 Q. A complaint that Jamaicans should  
14 be put on the top of a mountain and given a  
15 shovel, do you feel that complaint was  
16 counterproductive?

17 MS. KALE: Objection.

18 A. I don't know of it, as you say,  
19 existing and never heard it. If it is true, I  
20 would say no.

21 Q. Okay. Any other complaints by

22 Mr. Bryan that you felt were

23 counterproductive?

24 A. Just what I spoke about, and if

25 there are any more, I don't remember them

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2 right now.

3 Q. You also said that this  
4 particular letter, it went against you,  
5 correct?

6 A. I believe so, yes. In how you  
7 read the letter and the details of it, I don't  
8 think it went in my file that enhanced my  
9 record, but actually went against it.

10 Q. Did it affect your pay in any  
11 way?

12 A. Yes.

13 Q. In what way?

14 A. I didn't get a raise.

15 Q. Did it have any other effects on  
16 your employment other than the effect on your  
17 pay?

18 A. I can't think of any, I mean, I  
19 am still a supervisor. I am a supervisor,  
20 that is the position I've been in, still am

21 in, I told you what the details of what was  
22 the cost of that. Beyond that, I can't think  
23 of anything else.

24 MR. SCOTT: This document has  
25 been previously marked as well.

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2 MS. KALE: I think that is the

3 one that's C.

4 MR. SCOTT: Yes, C.

5 A. Okay.

6 Q. Mr. Gillette, have you ever seen

7 that document before?

8 A. Yes.

9 Q. What is it?

10 A. I believe it is in regard to some

11 information that the institution gives out to

12 all employees, that I had given to Mr. Bryan

13 two nights prior to the third night, where the

14 item got thrown out.

15 Q. And what information is this that

16 got thrown out?

17 A. I really don't remember.

18 Q. Do you see in the first paragraph

19 of that document, where it says in the second

20 line:

21 "Edmund Bryan, who informed me

22 that his benefits package" --

23 A. No, it wasn't a benefits package.

24 Q. It wasn't the benefits package?

25 A. No. I know that for sure. It

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2 was some kind of -- I think it was a single  
3 paper of something, of some sort, one single  
4 sheet.

5 A benefit package, there are  
6 several papers involved, because I remember  
7 the exact envelope was very thin and everybody  
8 gotten that, including myself, but it was a  
9 single piece of paper from the hospital. I  
10 don't remember exactly what it was, but I do  
11 know for sure, a benefit package is a lot  
12 thicker, it has a lot more information to it,  
13 but so, it was not a benefit package, I knew  
14 that for sure.

15 Q. Okay. Who wrote this document?

16 A. It was given out from the  
17 institution, everyone got it.

18 Q. No, the document we are looking  
19 at now, what was marked as C.

20 A. I believe John wrote this.

21 Q. It has your name in the top

22 left-hand corner?

23 A. Yes.

24 Q. It has your name in the top

25 left-hand corner, correct?

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2 A. Yes.

3 Q. 7501, it has a number next to it?

4 A. Yes.

5 Q. What is that number, if you know?

6 A. That is my employee number.

7 Q. And at the bottom left-hand

8 corner, it has John Meggs' name typed up?

9 A. Yes.

10 Q. And a signature underneath that?

11 A. Yes.

12 Q. And there is a date underneath

13 that signature?

14 A. Yes.

15 Q. Can you make that date out?

16 A. 9/20 of '05.

17 Q. Okay. Immediately then to the

18 right of that date, is another signature,

19 correct?

20 A. Correct.

21 Q. Whose signature is that?

22 A. That would be mine.

23 Q. Okay. And there is a date under

24 that, correct?

25 A. Correct.

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2 Q. What is that date?

3 A. 3/9/06.

4 Q. Did you review and sign this

5 document on March 9th of 2006?

6 A. I guess, yes.

7 Q. At the time you reviewed and

8 signed this document, did you see that in the

9 top paragraph, it said that Mr. Bryan said

10 that his benefits package was thrown in the

11 garbage?

12 A. I probably didn't read that in

13 detail or perceived it. If I did, I must have

14 perceived it as something different. I didn't

15 think it was important. The document in

16 question was, like I said, I don't -- from

17 what I remember, I do not believe it was a

18 benefit package.

19 It was a document that I had

20 given him and all of the staff the night, two

21      nights before, I remember Edmund leaving the  
22      document around and the second night he came  
23      in, I gave it to him again. The third night  
24      when I came in, without looking at whose name  
25      was on the document, because a lot of times

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2 staff will get documents.

3 Q. Yes.

4 A. They are not perceived as being

5 so important from the hospital and they leave

6 them lying around the department.

7 And the night shift, including

8 myself, we clean up the department and what I

9 did was I saw the document and I put it in the

10 garbage, not knowing who the document belonged

11 to.

12 The following day I came in, I

13 received an e-mail from John saying that

14 Edmund had complained that I had taken, this

15 is the third night, and I asked John, well, if

16 I give someone a document two nights before

17 and they continue to leave it in the

18 department, what should I do? He told me to

19 leave it in his office.

20 And once again, when something is

21 established and he gave me an answer. Now,  
22 when staff leave documents lying around the  
23 department, I'll gather them up and put them  
24 in his office.

25 Q. Okay.

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2 A. But I thought, as I got it done  
3 in the past with other documents, a lot of  
4 times staff don't want it, they really don't  
5 care, and when I clean up the department, I  
6 throw it out.

7 So it isn't to think that Edmund  
8 Bryan was singled out in this act, he was not.  
9 It was thrown out, as I had thrown out many  
10 other documents that staff had received and,  
11 you know, they sit on the cabinet or whatever  
12 for days until I throw it out. They don't  
13 want it so -- but in no way, shape or form was  
14 he -- because we have total of maybe 52  
15 employees working in that department, and to  
16 think that when 52 documents comes in, 52  
17 staff will make sure they take it, they leave  
18 it lying around all the time.

19 We are the shift that cleans up  
20 and other staff that leave it lying around, it

21 is no way that only Edmund Bryan is the only  
22 one to leave a document behind. Other staff  
23 do it all the time. So no way, shape or form  
24 that he is singled out. I just cleaned the  
25 department up and that's what I did.

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2 Q. At this point in time, had Edmund  
3 Bryan -- were you aware of any complaints that  
4 Edmund Bryan made against harassment or  
5 discrimination in the workplace?

6 A. The lawsuit.

7 Q. I'd like you to look at the last  
8 paragraph of this document, that first  
9 sentence:

10 "Mr. Gillette and I continue to  
11 have many discussions on the job  
12 working relationships he has with  
13 several of his staff members."

14 A. Okay.

15 Q. Is that an accurate sentence, was  
16 that an accurate sentence as of September 20,  
17 2005?

18 A. Yes.

19 Q. What kind of discussions would  
20 you have with Mr. Meggs about your job working

21 relationships?

22 A. I think this letter, at the time

23 there were -- we had two -- we had three

24 ladies on the shift and when you work in

25 central, part of what we do is we have carts

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2 that we load trays on and the carts can weigh  
3 like up to 5, 600 pounds.

4 And we had reached a point, based  
5 on Edmund Bryan's complaints, continuous  
6 complaints, that John was trying to make sure  
7 that everything on the shift is done  
8 equitably, like everyone is treated fairly and  
9 so on.

10 So what we did at this point was  
11 we had three women, I never had three, but I  
12 went two, three, but at one point, I had two,  
13 and the ladies, what I had them do, was they  
14 did a rotation, they did everything the men  
15 did. These two ladies in particular, when it  
16 came to them working in the steam area where  
17 they had to push the heavy carts, they didn't  
18 like it, they complained. When they worked in  
19 the case room and they had to push carts, they  
20 didn't like it, they complained.

21           So there was a lot of issue back  
22   and forth where they continuously went to John  
23   and complained about what I was asking them to  
24   do. And I think what he's referring to is  
25   like several -- several is about these other

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2 staff that had gone to complain about the job  
3 that I'm asking them to do this, but at that  
4 time, it was not my call, what I did was I  
5 said, okay, John, we have ladies working on  
6 the shift, how am I supposed to handle this?

7 I mean it may be my opinion that  
8 I wouldn't ask a woman to push a 600-pound  
9 cart in the sterilization area, but I'm not  
10 the institution and I want to follow the  
11 rules.

12 John told me that everything that  
13 the men did, the women would also have to do.  
14 That became a problem. It was a little rough,  
15 I think, for the ladies and they would  
16 complain and then finally, they were removed  
17 from the shift. I believe one had outright  
18 quit.

19 Q. What were the names of these  
20 three women?

21           A.   Alma Antwi and Comfort -- I don't  
22    know her last name, and so generally, they  
23    complained because I guess the job was a  
24    little rough on them. So I think that's what  
25    part of the letter -- several, meaning other

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2 staff.

3 Q. That's several other staff.

4 What about the word "many," many  
5 discussions, how many times?

6 A. I have no idea how many times.

7 The word "many," it is a continuing process.

8 People are continually being written up.

9 When you work in central, it  
10 isn't a calm place. People are continuously  
11 being written up, mistakes are continuously  
12 being made. Readjustment in the department,  
13 as far as how things are done, are  
14 continuously being up dated. As far as those  
15 words goes, if he was still working with us,  
16 we would still be doing it. It is a  
17 continuing process.

18 Q. And this last sentence:

19 "He was made aware that our  
20 conversations concerning these

21 counterproductive relationships are  
22 being monitored."  
23 What did you understand that  
24 phrase "counterproductive relationships" to  
25 mean?

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2 A. I think he's trying to say that I  
3 think in many ways, when I had discussions  
4 with John, especially about the ladies, John  
5 was not as detailed in understanding certain  
6 things that I believe he could have been.

7 And counterproductive is, I  
8 think, the way the ladies went and complained  
9 about what I had asked them to do, he  
10 perceived it to be different and interpreted  
11 it as such, counterproductive, when I was just  
12 doing what he had instructed me to do.

13 Q. Did you have any conversations  
14 with Sheila Donoghue about these  
15 relationships?

16 A. One time, one time, Sheila  
17 Donoghue had come down and Carol Grima made a  
18 complaint and I spoke to Sheila Donoghue about  
19 that. That's about it.

20 Q. What was her complaint, Carol

21 Grima?

22 A. She was complaining the various  
23 places that also -- the workplace where she  
24 worked, she claims I was harassing her.

25 Q. Specifically what was she

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2 claiming?

3 A. She claimed sexual harassment,  
4 which was like an open word, not any detail as  
5 to like what I had did. Her, myself, Carol  
6 and Sheila Donoghue sat down and spoke about  
7 this and when Carol was removed from the shift  
8 and it was later found out that her  
9 accusations were false.

10 Q. What were the accusations?

11 A. What I just told you.

12 Q. Well, you didn't. There were no  
13 details, it was just sexual harassment?

14 A. Yes, and that's when we sat down,  
15 myself, Carol Grima, Sheila Donoghue, she  
16 could not say specifically what I had done.

17 Q. And when you say they were later  
18 found out to be false, how did that happen?

19 A. Well, for example, Mike  
20 Rodriguez, who Carol Grima had called one

21 night and threatened me with physical  
22 violence, it was later on that I had various  
23 witnesses, Mike Rodriguez and so on, to verify  
24 that her claims were false and presently, with  
25 all that being said, Carol and I, we right

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2 now, we talk, so she later on told me that she  
3 was frustrated with the shift and her  
4 accusations and the things she had said was  
5 out of anger, she had made them up.

6 Q. And Ms. Donoghue told you this?

7 A. No, Carol. Carol and I now  
8 speak, is what I am saying. You know, it is  
9 not enemies, presently, now. She calls, she  
10 generally called me, not every night, but she  
11 calls a lot, you know, and, you know, talk  
12 about the department and so on, but generally,  
13 what she did was false and if you were to ask  
14 her right now, she would tell you. So all of  
15 that it was false, but then, on the other  
16 hand, that's John with her accusation, the  
17 other two ladies, how they claimed I presented  
18 a job to them.

19 Q. How were they claiming you  
20 presented the job to them?

21           A.   They were -- I am asking them to  
22   do things that they felt they shouldn't be  
23   doing, you know, like in the steam room. I  
24   would, you know, ask them certain things and  
25   there were certain areas where they didn't

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2 complete their job and I would speak to them  
3 about it and they got offended to the things I  
4 said, you know.

5 So it basically added up that  
6 they did not want to do the job as I was  
7 presenting it, because there was no separation  
8 in they being ladies and the rest being males,  
9 you know. Everyone did the same thing. They  
10 didn't want to do that.

11 And I think in many ways, John  
12 never really -- John has always been more of a  
13 person that his mind was made up, you know,  
14 assume a lot of things and, you know, if he  
15 thought it was like this, it was like that.  
16 There was really no explaining to him the  
17 final details as to what transpired.

18 Q. Any other complaints of sexual  
19 harassment lodged against you by any other  
20 people under your supervision?

21 A. No.

22 Q. Any other complaints of  
23 harassment of any type lodged against you by  
24 people under your supervision?

25 A. No.

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2 Q. In the evaluations that you've  
3 done for Edmund Bryan, have you said that he  
4 needs to improve his communication skills?

5 A. Yes.

6 Q. Have you also said that he needs  
7 to be more of a team player?

8 A. Yes.

9 Q. Has Edmund Bryan worked the  
10 weekends and holidays for pretty much everyone  
11 in the department for several years?

12 A. In the past, he requested, he had  
13 asked the manager Jim Appollo and all the  
14 guys, two of his staff that would normally  
15 rotate weekends, if he could work all the  
16 weekends and then everybody else would be off  
17 and he did that for years.

18 Q. Everyone, including you?

19 A. No, I was the lead at the time, I  
20 don't work weekends. He's never worked a

21 weekend that I had to work.

22 Q. All these times, he worked

23 weekends and allowed other people to have

24 their weekends off?

25 MS. KALE: Objection.

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2 A. Yes.

3 Q. Did you ever take that into

4 account when evaluating him as being a team

5 player?

6 MS. KALE: Objection.

7 A. When he did work weekends for

8 other staff, I was not a supervisor, which

9 means I would not be doing his evaluation.

10 When I was the supervisor or

11 became the supervisor, John Meggs, the

12 manager, had put a stop to Edmund Bryan

13 working weekends for other staff. John Meggs

14 had stopped him from doing that and told every

15 staff, all the staff that you are going to

16 need to work your own weekends, but Edmund

17 Bryan will no longer be permitted to do that.

18 Q. Do you know why that was?

19 A. No, I don't.

20 Q. Did other staff request that they

21 be allowed to work weekends?

22 MS. KALE: Objection.

23 A. I don't understand the question.

24 Q. All right. Have you ever seen

25 Jamal Robinson sleeping on the job?

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1 R. Gillette

2 A. Yes.

3 MS. KALE: Objection.

4 Q. Did you write him up?

5 A. Yes.

6 Q. Did you ever see Kevin Waldron  
7 sleeping on the job?

8 A. Yes.

9 Q. Did you write him up?

10 A. Yes.

11 Q. Did you ever see Kenneth Williams  
12 sleeping on the job?

13 A. Yes.

14 Q. Did you ever write him up?

15 A. Yes.

16 Q. Did you ever see Michael  
17 Rodriguez sleeping on the job?

18 A. No.

19 Q. How frequently had you seen Jamal  
20 Robinson sleeping on the job?

21 A. Not frequently.

22 Q. Every time you saw him sleeping

23 on the job, would you write him up?

24 A. No.

25 Q. What about Kevin Waldron, how

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1 R. Gillette

2 frequently?

3 A. Not frequent.

4 Q. Every time you saw him sleeping on  
5 the job would you write him up?

6 A. No.

7 Q. How about Kenneth Williams, how  
8 frequently did you see him sleeping on the  
9 job?

10 A. Not frequently.

11 Q. Every time you saw him sleeping  
12 on the job would you write him up?

13 A. No.

14 Q. Would sleeping on the job be  
15 considered a violation of the hospital's  
16 policies and procedures?

17 A. Yes.

18 Q. And on the occasions when you  
19 didn't write up any of these gentleman, why  
20 would you not write them up?

21 A. They would be terminated.

22 Q. So you didn't write them up so

23 they wouldn't lose their job?

24 A. No, I didn't write them up,

25 because my process was to try to work with

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1                   R. Gillette  
2       them, but not -- if they were -- definition of  
3       sleeping was not -- or I'll give you my  
4       definition of sleeping is where they would sit  
5       at a workstation and for a few seconds doze  
6       off, to the word "sleeping" that you are  
7       asking isn't where someone like sprawls out  
8       and just go to sleep. Sleeping, the  
9       definition to the question you are asking me  
10      is where someone would be at a workstation and  
11      they would like, you know, nod off for like a  
12      few seconds or so and I would come by and I  
13      would wake them up, I would like, you know....

14           Q.   Have you ever gone to a bar with  
15      workers under your supervision and consumed  
16      alcohol?

17           A.   In the past.

18           Q.   When was the last time you did  
19      that?

20           A.   Years ago.

21 Q. And you --

22 A. That was before, I would say,

23 before the lawsuit.

24 Q. What are the names of some of

25 these individuals who you would go to the bar

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1 R. Gillette

2 with?

3 A. Kenneth Williams, Bosh, I forgot  
4 his last name, Kevin Waldron, Mike Rodriguez,

5 Q. Did you ever order Edmund Bryan  
6 to work weekends for Kevin Waldron?

7 A. Well, first of all, I have never  
8 ordered anyone to do anything.

9 Q. Okay.

10 A. But I've never asked Edmund  
11 Bryan, no, to work any weekend for anyone.

12 Q. Did you ever instruct Edmund  
13 Bryan to simplify the list of instrument trays  
14 so that everyone can learn from it?

15 MS. KALE: Objection.

16 A. Simplify the list?

17 Q. Yes.

18 A. Could you be more a little more  
19 clear as to what that would be, simplifying  
20 the list.

21 Q. Or reorganize it such that it is

22 easier to learn the items on the list?

23 MS. KALE: Objection.

24 A. Reorganize a list?

25 Q. Yes.

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1 R. Gillette

2 A. I, as a supervisor, don't have  
3 the authority to do that. I don't know how I  
4 could under -- I don't understand how I could  
5 ask Edmund Bryan to do that.

6 When you get a list, the manager  
7 makes up the list and it is organized format,  
8 that list is sent off to Abacus and it is put  
9 in the system, but I, as a supervisor, don't  
10 have the authority to do that and I would not  
11 ask Edmund Bryan to do that.

12 Q. And were you ever asked by John  
13 Meggs to instruct Edmund Bryan to create a  
14 list of the instruments for the purpose of  
15 assisting people in learning the instruments?

16 MS. KALE: Objection.

17 A. No.

18 Q. No?

19 A. No.

20 Q. Okay. Did you ever tell Edmund

21 Bryan that if he did not teach Miguel Ruiz  
22 whatever he needed to know, that you would  
23 call security and send him home?  
24 MS. KALE: Objection.  
25 A. No.

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1 R. Gillette

2 Q. Have you ever threatened to call  
3 security to send Mr. Bryan home if he did not  
4 train someone?

5 MS. KALE: Objection.

6 A. No.

7 MR. SCOTT: I just need a moment.

8 (Recess taken.)

9 MR. SCOTT: I have no further  
10 questions, Mr. Gillette.

11 MS. KALE: I have a few  
12 questions.

13 EXAMINATION BY MS. KALE:

14 Q. If we can show the witness  
15 Plaintiff's Exhibit E.

16 Mr. Gillette, do you see a date  
17 on this document?

18 A. Yes, I do. The date is 12/22/02.

19 Q. And was this report generated, to  
20 your knowledge, was the report generated on

21 the day printed?

22 A. Yes.

23 (Transcript continues on next

24 page)

25

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143

1 R. Gillette

2 MS. KALE: That's all.

3 (Time noted: 1:43 P.M.)

4 \_\_\_\_\_

5 Rupert Gillette

6

7 Subscribed and sworn to

8 before me this\_\_\_\_\_day

9 of\_\_\_\_\_2008.

10 \_\_\_\_\_

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2

C E R T I F I C A T E

3

STATE OF NEW YORK )

4

) ss.:

COUNTY OF NEW YORK )

5

I, CHARISSE ROMEO, a Shorthand

6

Reporter and Notary Public within and

7

for the State of New York, do hereby

8

certify:

9

That I reported the proceedings in

10

the within-entitled matter, and that the

11

within transcript is a true record of

12

such proceedings.

13

I further certify that I am not

14

related, by blood or marriage, to any of

15

the parties in this matter and that I am

16

in no way interested in the outcome of

17

this matter.

18

IN WITNESS WHEREOF, I have hereunto

19

set my hand this\_\_9th\_\_day of\_May\_\_,

\_\_\_\_

20

2008.

21

22

---

CHARISSE ROMEO

23

24

25

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1

2 April 29, 2008

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